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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 130.

RAFAEL MARTINEZ NADAL, PLAINTIFF IN ERROR,

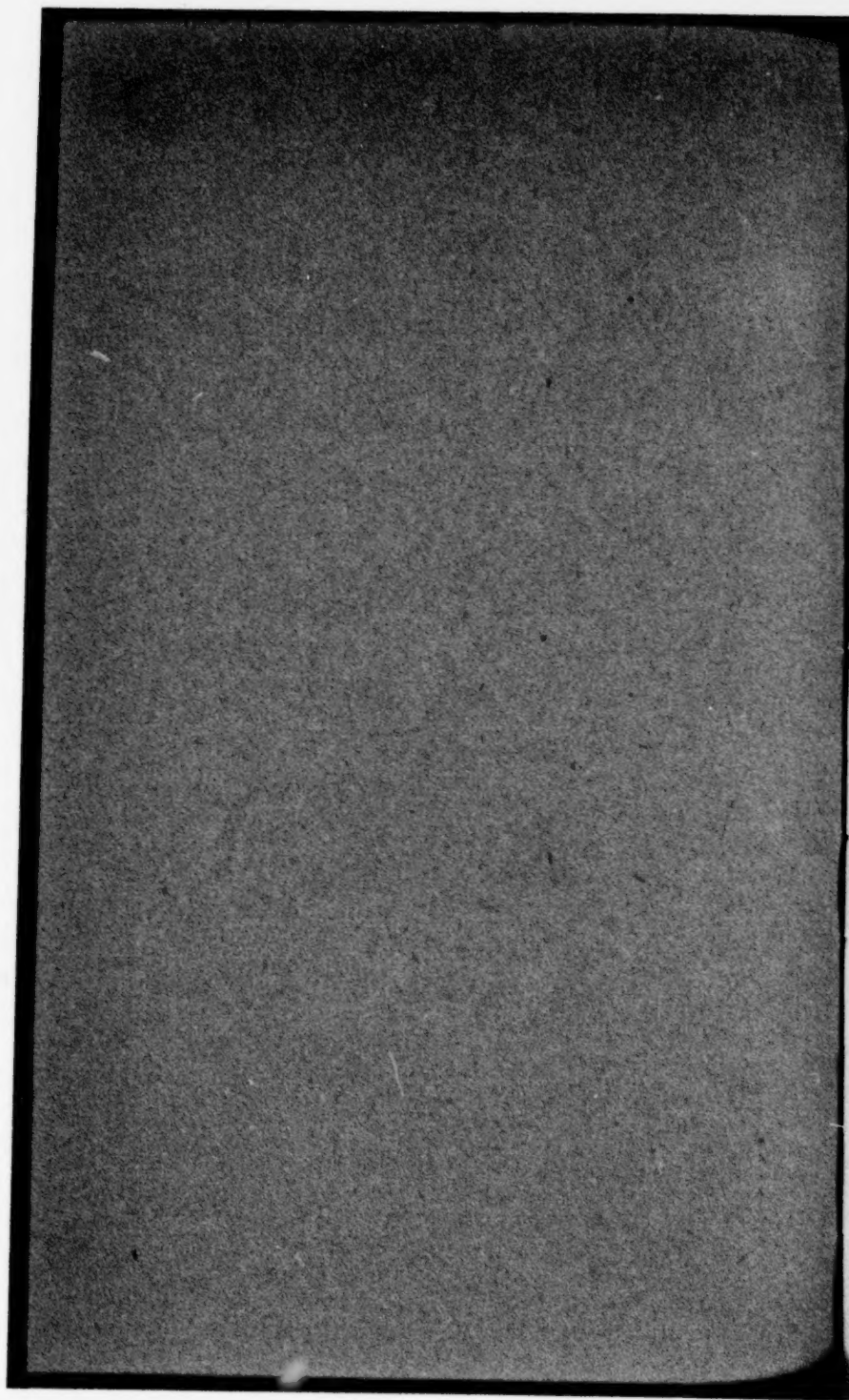
vs.

DAVID W. MAY.

**IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.**

FILED NOVEMBER 21, 1911.

(22,940)



(22,940)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 130.

RAFAEL MARTINEZ NADAL, PLAINTIFF IN ERROR,

v.s.

DAVID W. MAY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

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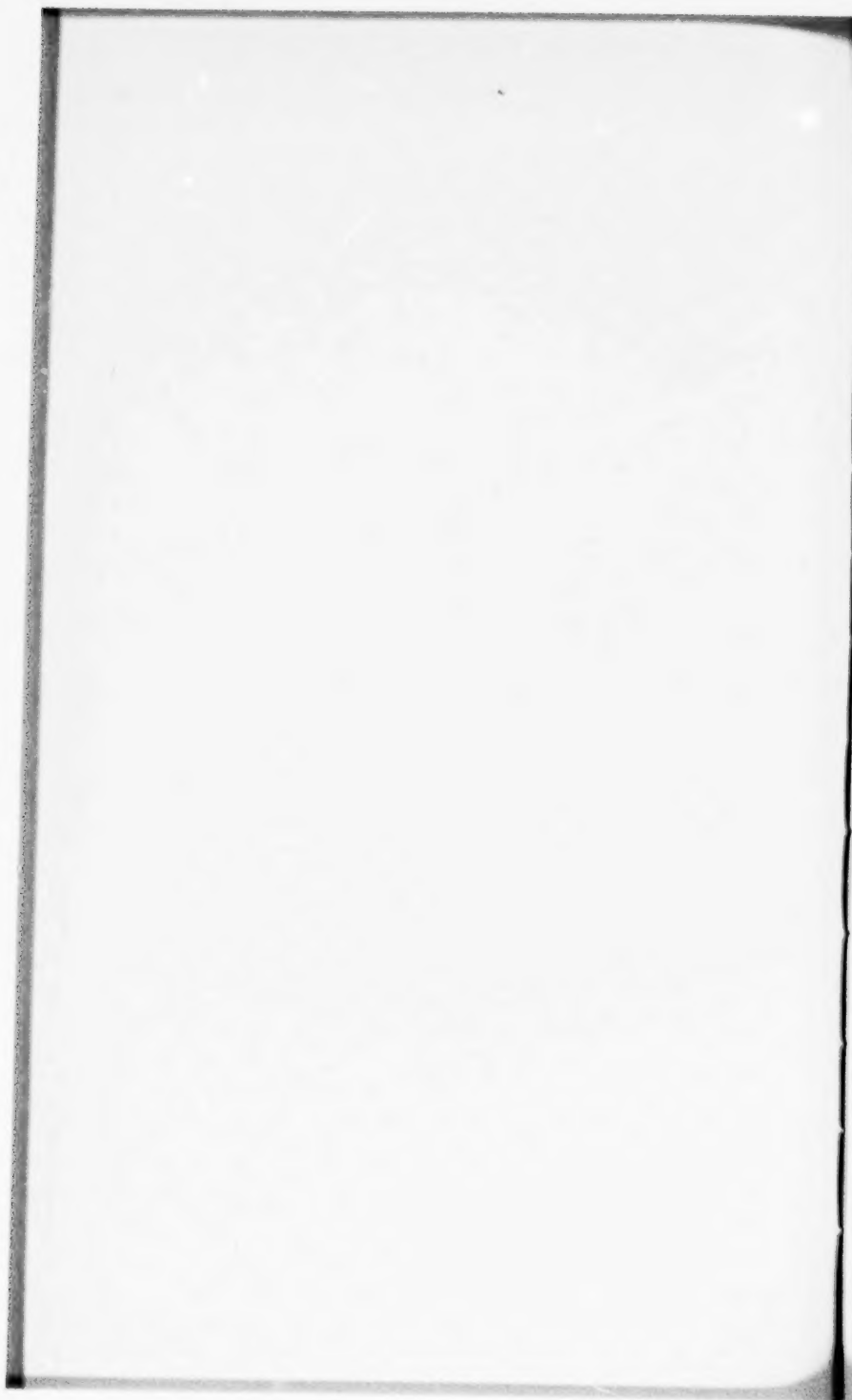
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a In the District Court of the United States for Porto Rico.

No. 755, San Juan.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

The Clerk of the Court, in making up the Transcript of Record in this cause for the Supreme Court of the United States, will please include therein the following pleadings and proceedings, to wit:

1. The original complaint..... filed June 26, 1909.
2. The amendment to same..... " July 17, "
3. The original answer..... " Oct. 19, "
4. A stipulation between attorneys..... " Aug. 17, 1910.
5. The amended answer, filed in accordance therewith..... " " " "
6. Plaintiff's demurrer to same..... " Sept. 1, "
7. Journal entry of trial..... " Dec. 12, "
8. Journal entry showing that the October Term, 1910, was finally adjourned, (page 340)..... " Apr. 5, 1911.
9. Bill of Exceptions..... " Sept. 15, "
10. Petition for writ of error..... " " 25, "
11. Bond on Writ of Error, with approval thereof..... " " " "
12. Assignment of Errors..... " " " "
13. Writ of Error, with allowance and certificate of copy lodged..... " " " "
14. Original citation, with acceptance of service..... " " " "

And oblige,

(Signed)

N. B. K. PETTINGILL,

Attorney for Plaintiff.

Complaint.

Filed June 26, 1909.

2 In the United States District Court for Porto Rico.

No. —, Mayaguez Div.

RAFAEL MARTINEZ Y NADAL

vs.

DAVID W. MAY.

Rafael Martinez y Nadal, plaintiff, by his attorneys F. L. Cornwell and N. B. K. Pettingill, sues David W. May, defendant in an action for the recovery of real property, and alleges:

I.

That the plaintiff, Rafael Martinez y Nadal, is a citizen and resident of Porto Rico, and that the defendant, David W. May, is a citizen of the United States, also residing in Porto Rico.

II.

That on and before the 2nd day of June, A. D. 1902, one Isidoro Fernandez Sanjurjo y Skerret, being then the husband of Altagracia Nadal y Freyre, was the owner of a certain plantation called "Carmen" more particularly described as follows:

"Consisting of 224.25 cuerdas, equivalent to 88 hectares, 13 ares and 89 centiares, composed of coffee, pasture, cane land and hills, situated in the barrio of Miradero, jurisdiction of Mayaguez, with its dwelling-house, other edifices and improvements and irrigation rights, bounded on the north by the stream "de Oro" and the farms of Francisco Ramos, widow of Rocafort, Sucesion Lacourt, and Olivieri Brothers; on the east by a vecinal road, lands of Adolfo Gomez and Juan Luciano, another vecinal road and lands of Genaro Cartagena, Manuel Bengoa and Pedro Agustini; on the west by lands of the old "Hacienda Carmen" the stream "de Oro", lands of Antonio Lopez, Juan Roland, Francisco Borrero, Ramon Ruiz, the vecinal road from Añasco, Luis Cartagena, and the Highway from Añasco; and on the south by the Yaguez River and lands of the Misses Garcia Sanjurjo."

3

III.

That said plantation above described had been purchased and acquired by said Isidoro Fernandez Sanjurjo after the existence of the conjugal relation and partnership between him and the said Altagracia Nadal y Freyre and with the individual and separate money and funds of his said wife, although the title thereto was taken in his own name; wherefore the same was held by said Isidoro Fernandez Sanjurjo subject to the ganancial rights of his said wife and she, the said Altagracia Nadal y Freyre became the owner of an undivided one-half interest therein upon the termination of said conjugal partnership, which according to the law in force after the 1st day of March, 1902, could not be alienated or disposed of without her consent.

IV.

That on said 2nd day of June, 1902, the said Isidoro Fernandez Sanjurjo, pretended and attempted to sell, transfer and convey the title to the whole of said described plantation to one Elisa Garcia Sanjurjo, but his said wife, Altagracia Nadal y Freyre did not join in said conveyance, nor did she then, nor has she at any time since, given her consent thereto as required by law in order to transfer and convey her gana-cial rights therein.

V.

That on the — day of July, A. D. 1906, the said Altagracia Nadal y Freyre departed this life in Mayaguez, Porto Rico, leaving her surviving her said husband, Isidore Fernandez Sanjurjo; whereby the conjugal partnership up to that time existing between said husband and wife was dissolved and the interest of said deceased therein descended to her heirs, devisees or legatees, in accordance with the law then in force.

VI.

That said Altagracia Nadal y Freyre died as aforesaid leaving a full testamentary disposition in the form of a closed will, dated the 27th day of April, 1906, which was after her death duly opened and established in pursuance of the decree of the District Court for the Judicial District of Mayaguez, issued on the 28th day of July, 1906; and that by the terms of the 3rd clause of said will the said testatrix deprived her said husband of whatever usufructuary rights he might otherwise have had in her estate, and by the terms of the 7th clause thereof she devised to her nephew Rafael Martinez y Nadal, plaintiff herein, all the right, interest and claim which might remain to her in the properties belonging to her which should be in the name of her said husband, Isidoro Fernandez Sanjurjo.

VII.

That during the continuance of said conjugal partnership between said Isidore Fernandez Sanjurjo and Altagracia Nadal y Freyre, the said husband was legally entitled to the possession and control of the described plantation, which right may have passed to his grantees under said deed of June 2, 1902, but from and after the dissolution of said conjugal partnership by the death of said Altagracia Nadal y Freyre as aforesaid, the title and right of possession to an undivided one-half interest therein descended to and became vested in the said plaintiff, as devisee of his said aunt, Altagracia Nadal y Freyre aforesaid, and said plaintiff has from said date been wrongfully deprived thereof by the defendant, David W. May, who has been in possession and control of the same during all of said time.

Wherefore the plaintiff brings this suit and asks the judgment of the court that he be declared to be the owner and entitled to the possession of an undivided one-half interest in and to the plantation "Carmen" hereinbefore described, and to be placed in possession and enjoyment thereof; and that defendant be adjudged to pay him mesne profits for the unlawful detention of the same from the 1st day of August, 1906, at the rate of \$2,500 per year and for a reasonable fee for the services of his attorneys herein.

(Signed)

(Signed)

F. L. CORNWELL,

N. B. K. PETTINGILL,

Attorneys for Plaintiff.

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RAFAEL MARTINEZ NADAL VS. DAVID W. MAY.

6

Amendment to Complaint and Notice.

(Filed July 17th, 1909.)

7

In the District Court of the United States for Porto Rico.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

To Hon. Henry M. Hoyt, Attorney General of Porto Rico, Attorney of Record for Defendant:

You will please take notice that, in accordance with the provision of section 139 of the Code of Civil Procedure we have this day filed certain amendments to the original complaint filed in the above entitled cause, in order to make clearer the details of certain allegations contained in said original complaint, and thereby avoid certain of the grounds set forth in the demurrer heretofore filed by you on behalf of the defendant therein.

We suggest that the brief already ordered to be filed by the court be framed and submitted upon your demurrer as applied to the complaint as now amended, so that the decision thereon may finally determine the law of the case.

Very respectfully,
(Signed)

F. L. CORNWELL,
N. B. K. PETTINGILL,
Attorneys for Plaintiff.

Mayaguez, P. R., July 16, 1909.

8

In the District Court of the United States for Porto Rico.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Comes now the plaintiff, by his attorneys F. L. Cornwell and N. B. K. Pettingill, and in pursuance of the right granted by section 139 of the Code of Civil Procedure, amends his original complaint in the following particulars, to wit:

I.

By inserting in paragraph III of said original complaint after the words "Isidro Fernandez Sanjurjo" in the second line thereof the following word: "on the ninth day of April, 1902, and"; also by striking out in the third line from the last of the same paragraph the word "upon" and inserting in place thereof the words "subject to the control and administration of her said husband until."

II.

By adding at the end of paragraph IV of said original complaint the following words: "nor has she or her heirs, of the plaintiff herein as her dedisee, ever received any part of, or benefit from, the price paid to said Isidro Fernandez Sanjurjo therefor."

9

III.

By adding after paragraph VII the following additional paragraph:

VIII.

That said premises and property hereinbefore described were not upon the dissolution of said conjugal partnership subject to any debts or other obligation of the same, but said undivided one-half interest therein passed to the plaintiff as above alleged free and clear of any such obligation and of any lien or burden whatsoever.

And plaintiff prays for judgment as in and by his original complaint he has already prayed.

(Signed)

F. L. CORNWELL,

N. B. K. PETTINGILL,

Attorneys for the Plaintiff.

10

Answer.

(Filed October 19, 1909.)

11 In the District Court of the United States for Porto Rico.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Answer.

David W. May, defendant herein, appears by his attorney, the Acting Attorney General of Porto Rico, and answering to the complaint in the above entitled cause, alleges:

I.

That he has no knowledge, information or belief as to whether the said plaintiff Rafael Martinez y Nadal is a citizen of Porto Rico, and therefore denies the allegation that said plaintiff is a citizen of Porto Rico; admits that the defendant is a citizen of the United States residing in Porto Rico.

II.

Admits the allegations contained in paragraph 2 of the said complaint.

III.

Defendant admits that the property described in paragraph 2 of the said complaint was acquired by Isidro Fernandez Sanjurjo on the 9th day of April, 1902, and during the existence of the
12 conjugal relation and partnership between him and Alta-gracia Nadal y Freyre, but denies that the said property was purchased with the separate money and funds of the said Alta-gracia Nadal y Freyre, and that the same was subject to her ganancial rights as wife of the said Isidro Fernandez Sanjurjo, or that she had any right, interest or participation whatsoever in the said property.

IV.

Admits that on the said 2nd day of June, 1902, the said Isidro Fernandez Sanjurjo sold, transferred and conveyed the title to the whole of the said described plantation to one Elisa Garcia Sanjurjo, but denies that his said wife Alta-gracia Nadal y Freyre did not join in said conveyance, nor that she did not then or after give her consent thereto, nor that she, her heirs or the plaintiff herein as her devisee have never received any part of or benefit from the price paid to the said Isidro Fernandez Sanjurjo therefor.

V.

That defendant has no knowledge, information or belief sufficient to enable him to answer the allegations contained in paragraph 5 of the said complaint, and therefore denies the same.

VI.

Denies each and every of the allegations contained in paragraph 6 of the said complaint.

VII.

Denies the allegations contained in paragraph 7 of the said complaint.

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VIII.

Denies the allegations contained in paragraph 8 of the said complaint.

IX.

And defendant further alleges that prior to the sale of the property as set out in paragraph 4 of the said complaint, the said Alta-gracia Nadal y Freyre had competently released all her rights, title and interest in the said property, and had consented to the sale thereof by her said husband the said Isidro Fernandez Sanjurjo.

Wherefore, defendant asks for judgment against said plaintiff and costs herein.

San Juan, P. R., October 19, 1909.

(Signed)

J. H. BROWN,

Acting Attorney General and Attorney for Defendant.

14

Stipulation.

(Filed Aug. 17, 1910.)

15

In the District Court of the United States for Porto Rico.

Law. No. 755.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Stipulation.

It is hereby stipulated by and between N. B. K. Pettingill, attorney for the above named plaintiff, and Foster V. Brown, Attorney General of Porto Rico, and attorney for the above named defendant, that the defendant may file an amended answer to the amended complaint heretofore filed in the above entitled cause, and the plaintiff hereby waives all objections because of the time in which said amended answer is filed.

Date ¹, San Juan, August 16, 1910.

(Signed)

N. B. K. PETTINGILL,

Attorney for Plaintiff.

(Signed)

FOSTER V. BROWN,

Attorney Gen'l of Porto Rico and Attorney for Defendant.

16

Amended Answer to Amended Complaint.

(Filed August 17, 1910.)

17

In the District Court of the United States for Porto Rico.

No. —.

RAFAEL MARTINEZ Y NADAL

vs.

DAVID W. MAY.

Amended Answer to Amended Complaint.

Comes now the above named defendant, David W. May, by and through his attorney, Foster V. Brown, Attorney General of Porto Rico, and by the leave of Court first had and obtained, files this his amended answer to the amended complaint heretofore filed in the above entitled action, and for cause of answer alleges:

I.

That defendant has no knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph I of plaintiff's complaint, to the effect that the said plaintiff,

Rafael Martinez y Nadal, is a citizen and resident of Porto Rico, and therefore denies the same; but admits that the defendant, David W. May, is a citizen of the United States residing in Porto Rico.

II.

Defendant admits the allegations contained in paragraph II of plaintiff's amended complaint.

18

III.

Defendant admits that the property described in paragraph II of plaintiff's amended complaint was acquired by Isidor Fernandez Sanjurjo and the deed therefor taken in his name during the existence of the conjugal relation and partnership existing between him and the said Altagracia Nadal y Freyre but denies that the same was acquired by said Isidor Fernandez Sanjurjo on the 9th day of April, 1902, and denies that the said property was purchased with the separate money and funds of the said Altagracia Nadal y Freyre, or that the same was subject to her ganancial rights as wife of the said Isidor Fernandez Sanjurjo, or that she became the owner of an undivided one-half interest therein subject to the control of the said Isidor Fernandez Sanjurjo, until the termination of the said conjugal partnership; and denies that she had any right, title, interest or participation whatsoever in said property, or that the same could not be alienated or disposed of without her consent.

IV.

Defendant admits that on the 2nd day of June, 1902, the said Isidor Fernandez Sanjurjo sold, transferred and conveyed the title to the whole of the said described plantation to one Altagracia Alicia Garcia Sanjurjo, but denies that his said wife, Altagracia Nadal y Freyre, did not join in said conveyance, or that she did not then or thereafter give her consent thereto, or that she, her heirs or the plaintiff herein as her devisee had never received any part of or benefit from the price paid to the said Isidor Fernandez Sanjurjo therefor.

V.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph
19 V of said amended complaint, and therefore denies the same.

VI.

Defendant denies each and every allegation and thing contained in paragraph VI of plaintiff's amended complaint.

VII.

Defendant admits that during the continuation of said conjugal partnership between the said Isidor Fernandez Sanjurjo and his wife Altagracia Nadal y Freyre, the said Isidor Fernandez Sanjurjo was legally entitled to the possession and control of the premises described in plaintiff's amended complaint, which right did pass to his grantees under said deed of December 2, 1902; but defendant denies that from and after the dissolution of said conjugal partnership the title and right of possession to an undivided one-half interest therein descended to and became vested in said plaintiff as devisee of his said aunt, Altagracia Nadal y Freyre, and denies that said Plaintiff has from said date or at any time been wrongfully deprived of the possession of said premises by the said defendant, David W. May.

VIII.

Defendant denies that the rental value of said estate is worth the sum of \$2,500 a year, or any other sum.

The defendant further answering and by way of defense to the amended complaint filed herein, alleges as follows:

That prior to the 11th day of April, 1899, the said Altagracia Nadal y Freyre and Isidor Fernandez Sanjurjo were married in Porto Rico and became husband and wife; that on or about the year 1900 the said Isidor Fernandez Sanjurjo purchased and acquired the premises described in plaintiff's amended complaint filed herein, for the sum of 36,000 pesos, giving in payment therefor other property and money in the sum of 21,000 pesos, and a mortgage upon the same estate for the balance of the purchase price; that the amount of money and property so paid at the time of the consummation of said sale, and subsequent thereto, was paid by the said Isidor Fernandez Sanjurjo from his individual and separate money, funds and property.

That on or about the year 1900 the said Altagracia Nadal y Freyre deserted the home of the said Isidor Fernandez Sanjurjo refused and continued to refuse to live with the said Isidor Fernandez Sanjurjo, and never afterwards lived with the said Isidor Fernandez Sanjurjo.

That on the 1st day of May, 1901, the said Altagracia Nadal y Freyre commenced an action in the District Court of Mayaguez, Porto Rico, against her said husband, Isidor Fernandez Sanjurjo, praying for an accounting of her paraphernal property. That subsequently and before the trial of the issues of said action and on the 16th day of November, 1901, the said Altagracia Nadal y Freyre and the said Isidor Fernandez Sanjurjo entered into a contract of agreement in full settlement of all property and property rights heretofore acquired by either of the spouses during the marriage.

That by virtue of said contract of settlement the said Isidor Fernandez Sanjurjo transferred and conveyed to the said Altagracia Nadal y Freyre, in full settlement all of her claims, rights and

actions against the said Isidor Fernandez Sanjurjo, certain properties in the City of Mayaguez; \$5,000 in cash, and executed a legal mortgage upon a breeding farm situated in Guanajibo, Cabo Rojo, in the sum of \$5,000.

21 That by virtue of this settlement, transfer and conveyance of property to her, the said Altagracia Nadal y Freyre executed a release in favor of the said Isidor Fernandez Sanjurjo, waiving therein all rights and actions which might exist in her favor and against her husband in reference to the property heretofore or hereafter acquired by the said Isidor Fernandez Sanjurjo; and thereupon dismissed the action theretofore instituted by the said Altagracia Nadal y Freyre against the said Isidor Fernandez Sanjurjo.

That during the settlement between the said Altagracia Nadal y Freyre and Isidor Fernandez Sanjurjo the premises described in plaintiff's amended complaint was not considered by the said Altagracia Nadal y Freyre nor claimed by her, because the same were encumbered by a mortgage in the sum of \$21,000, their full value.

That thereafter and on or about the 2nd day of June, 1902 the said Isidor Fernandez Sanjurjo transferred and conveyed to one Alicia Garcia Sanjurjo the said premises as described in plaintiff's amended complaint, for the purpose of conveying the same to the People of Porto Rico; and that on or about the 29th day of August, 1902, the said Alicia Garcia Sanjurjo by good and valid deed sold, transferred and conveyed the title to the whole of said described plantation to the People of Porto Rico for the sum of \$19,000.

That subsequent to the settlement heretofore mentioned and prior to the transfer of said property to the People of Porto Rico, the said Isidor Fernandez Sanjurjo paid all the mortgages existing upon the premises described in plaintiff's complaint out of his individual and

22 separate funds, with the exception of a mortgage for the sum of \$5,600 and a judgment of \$900 which encumbered the property at the time of the transfer to the People of Porto Rico, and The People of Porto Rico, at the time of the purchase from Alicia Sanjurjo and in order to clear the property of all indebtedness, paid said mortgage of \$5,600 and said judgment of \$900 due upon said property; and the balance of said price was paid to the said Isidor Fernandez Sanjurjo.

That at the time of the transfer of this property to The People of Porto Rico the only improvements thereon were a house, an old sugar mill, and five sheds for the workmen, all in bad condition; and between the date of the purchase and the 15th day of July, 1906, defendant herein erected substantial buildings thereon, built fences, planted various trees and plants which were brought from all parts of the world, and made substantial improvements thereon at the costs of \$50,000.

That the said Altagracia Nadal y Freyre, after leaving her said husband and after the settlement heretofore referred to, and during all the time between the date of purchase of said property by the People of Porto Rico and up to the time of her death, lived in the city of Mayaguez and in the immediate vicinity and within a short

distance from the premises described in the plaintiff's amended complaint; and during all of which time well knew of said sale to The People of Porto Rico, and well knew of said improvements that had been made and were being made thereon; and never during all of the said time made any objections thereto, nor asserted any claim to the property; but, on the contrary, disavowed any right, title or interest in the same, and never during her life asserted any claim to the premises in dispute.

By reason of the facts stated above the said Altagracia Nadal y Freyre estopped herself in law and in fact to set up any
 23 claim to the property during her lifetime, and in fact did not assert any claim, and all those claiming under her are now barred in law; all of which is set up and relied upon as a complete defense to this suit.

Wherefore, defendant demands judgment against said plaintiff, and for his costs herein.

Dated, at San Juan, Porto Rico, this 16th day of August A. D. 1910.

(Signed)

FOSTER V. BROWN,
Attorney General of Porto Rico and
Attorney for Defendant.

24 *Demurrer to Answer.*

(Filed Sept. 1st, 1910.)

25 In the District Court of the United States for Porto Rico.

No. 218, Mayaguez.

RAFAEL MARTINEZ NADAL
 vs.
 DAVID W. MAY.

Comes now the plaintiff, by his attorneys F. L. Cornwell and N. B. K. Pettingill, and demurs to that part of the answer of said defendant which attempts to set up an affirmative defence, upon the ground that the facts set forth and alleged in said affirmative defence are not sufficient to constitute a valid defence to plaintiff's cause of action.

Wherefore plaintiff prays that this demurrer be sustained and said attempted affirmative defence be stricken from said answer.

San Juan, August 31, 1910.

(Signed)

F. L. CORNWELL,
 N. B. K. PETTINGILL,
Attorneys for Plaintiff.

26 (Journal Entry of December 12, 1910.)

27 In the District Court of the United States for Porto Rico.

755. Law.

RAFAEL MARTINEZ NADAL

VS.

DAVID W. MAY.

This cause comes on for trial. Comes the plaintiff in his own proper person and represented by N. B. K. Pettingill, Esq., of counsel herein, and comes the defendant, represented by his attorneys the Honorable Foster V. Brown, Attorney General of Porto Rico, W. L. Landers, H. L. Lyons, and Frank Martinez. And comes also a jury, that is to say:

E. A. Gildermiester

O. I. Goble

E. J. Hinckley

N. L. Reed

E. Gatell

J. R. Latimer, Sr.

Justo Barros

Earl Vendig

F. H. Johnson

P. M. McCormick

Roman Romant

Luis Guillermety,

twelve good and lawful men, chosen from the body of the District of Porto Rico, duly sworn, examined and impanelled to try the issues joined between the parties herein.

Now comes N. B. K. Pettingill, plaintiff's attorney and calls the attention of the Court to plaintiff's demurrer to amended answer herein. And thereupon, the Court after hearing N. B. K. Pettingill, Esq., for the said demurrer, being duly advised, overrules the same. To which action of the Court in overruling said demurrer the said N. B. K. Pettingill, attorney for the plaintiff then and there duly objects and excepts.

Thereupon the witnesses for both sides are called, duly sworn, and the trial is proceeded with. The court hears all the testimony

on behalf of the plaintiff and defendant herein and at the
28 conclusion thereof the defendant, David W. May, by his attorneys of record therein, moves the court to dismiss this cause for want of jurisdiction, and that the jury being directed to bring a verdict for the defendant: And the court upon due consideration of said motion, instructs the jury to bring in a verdict for the defendant, overruling said motion as to want of jurisdiction, which said verdict, being read by the Clerk, is as follows, to wit:

"We the jury duly empanelled and sworn and after hearing all

the testimony in the above entitled cause find for the defendant under the direction of the court.

NEWTON L. REED, *Foreman.*"

And the jury being asked if this is their verdict, all answer that it is. Said verdict is thereupon ordered to be filed and entered of record, and the jury is discharged from further consideration of the cause.

Wherefore, it is ordered and adjudged, that David W. May, defendant herein, go hence without day and that he have and recover of and from the plaintiff, Rafael Martinez Nadal, his costs herein laid out and expended, to be taxed by the Clerk, for which execution may issue.

29 *Journal Entries of April 5th, 1911.)*

30 In the District Court of the United States for Porto Rico.

In the Matter of Adjournment of April Jury Term.

It is hereby ordered that the Marshal of this Court open the April Term of this Court on the second Monday, April 10th, 1911, at nine o'clock in the forenoon of that day and adjourn said term until the further order of the court.

Given on this 5th day of April, A. D. 1911.

By the Court.

(Signed)

JOHN J. JENKINS, *Judge.*

In the Matter of Adjournment of the Present Term of Court.

It is hereby ordered that the present term of court be and the same is hereby adjourned sine die.

(Signed)

JOHN J. JENKINS, *Judge.*

31 *Bill of Exceptions.*

Filed Sept. 15, 1911.

32 In the United States District Court for Porto Rico.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Bill of Exceptions.

Be it remembered that at the term of the United States District Court for Porto Rico held in the City of San Juan on the 13th day of December, 1910, a cause therein pending wherein Rafael Martinez Nadal was plaintiff and David W. May was defendant, came

on to be heard before the Honorable John J. Jenkins, Judge of said Court, at which time came the said parties by their respective attorneys, N. B. K. Pettingill, Esq'r., for the plaintiff, and Foster V. Brown, Esq'r., Attorney-General of Porto Rico, for the defendant, and thereupon the said issues theretofore joined in said cause between the said parties came on to be tried, and the jurors of the jury whereof mention is in the record of said cause made being called likewise came, and were sworn to try the said issues upon the merits of said cause in manner aforesaid joined as provided by law.

And thereupon the plaintiff, to maintain the issues upon his part, being duly sworn as a witness in his own behalf, testified as follows:

My name is Rafael Martinez Nadal. My residence is Mayaguez, Porto Rico. I am acquainted with Ysidro Fernandez Sanjurjo and with Mrs. Altagracia Nadal y Freyre. I am the nephew of the latter—that is, she was a sister of my mother. She died in the year 1906, leaving a last will and testament. I am one of the heirs, and took steps to have it open and proved.

Whereupon the following colloquy took place between counsel for the respective parties and the Court:

MR. PETTINGILL: If Your Honor please, I now offer a certified copy of the closed will of Altagracia Nadal y Freyre, and the legal proceedings by which it was opened and established.

THE COURT: It is practically the judgment of probate?

MR. PETTINGILL: Yes, it corresponds to the probate.

MR. BROWN: We have no objection to this will. The translation however which is made by Mr. Pettingill, is not correct. We are not bound by that. Of course we want to show a correct translation of it. There is no objection to that, but the rule requires a translation.

MR. PETTINGILL: I took the trouble to make a translation and submit it to the Attorney General and he returned it to me without comment.

MR. BROWN: I had intended to send word by Mr. Jones that we had an objection to it.

MR. PETTINGILL: Mr. Jones didn't deliver that message. This ought to be read to the jury. If the Attorney General will submit his translation.

THE COURT: What question can arise under this will for the jury?

MR. PETTINGILL: None I think. It is entirely for Your Honor. If the question goes to the jury, they must have the will before them so as to interpret it under Your Honor's charge.

MR. BROWN: Is there any use of reading any of it except the seventh clause?

MR. PETTINGILL: No, I don't think so.

Mr. Brown then read the seventh clause of the will from his translation as follows:

In view of the good conduct of my nephew Don Rafael Martinez y Nadal, and taking into account his situation and the affection

which he daily shows me, I bequeath to him a mortgage note upon the cane plantation known as La Margarita de Schroder, for the sum of five thousand four hundred dollars, as well as all the rights and actions therein. I also bequeath to my nephew, Rafael Martinez Nadal, the legal mortgage executed by my husband in my favor upon the cattle ranch situated in Guanajibo of Cabo Rojo, in case the assignment which I made of the said mortgage in favor of my nephew aforesaid, Rafael Martinez y Nadal, shall not have become effective," your translations put the word 'and' there, "all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband."

Mr. BROWN (handing the document he just read from to the Interpreter): That is your translation?

35 The INTERPRETER: Yes sir.

Mr. PETTINGILL: An interpreter makes a translation but he may make it with one word omitted or not omitted if his attention is not called to it.

Mr. BROWN: That is why we called his attention to it.

Counsel for the plaintiff thereupon contended that the translation submitted by him was correct, which translation was as follows:

"7th.—In view of the good behavior of my nephew Don Rafael Martinez y Nadal, and considering his situation and the affection which he daily shows towards me, I bequeath to him a mortgage-note upon the plantation called "Margarita de Schroder" for the sum of \$5,400, together with all of its rights and liens; I also bequeath to my nephew Don Rafael Martinez y Nadal the legal mortgage executed by my husband in my favor over a cattle ranch situated in Guanajibo of Cabo-Rojo, provided that the assignment of said mortgage which I made before a notary in favor of my said nephew Don Rafael Martinez y Nadal should not have been effective, and all of the rights and claims which may remain to me in my property which should be in the name of my husband Isidro Fernandez Sanjurjo by virtue of the compromise entered into with my said husband.

The COURT: The Official Interpreter's translations are accepted here.

To which ruling of the Court counsel for plaintiff excepted.

And in order that the true translation may be determined by the Appellate Court, the said seventh clause of said last will and testament of Altagracia Nadal is herein inserted in the original Spanish, which is in words and figures following, to-wit:

36 "7a. En vista del buen comportamiento de mi sobrino Rafael Martinez y Nadal, y atendiendo á su situacion y al afecto que me demuestra diariamente le lego, un vale hipotecario sobre la hacienda de cañas llamada 'Margarita de Schroder,' por la cantidad de cinco mil cuatrocientos dollars, asi como todos sus derechos y acciones. Lego tambien á mi sobrino Rafael Martinez y Nadal, la hipoteca legal otorgada por mi esposo á mi favor sobre

una finca de crianza sito en Guanajibo de Cabo-Rojo, caso de que no hubiese surtido efecto la cesión que ante Notario hice de disha hipoteca á favor de mi ameritado sobrino Rafael Martínez y Nadal, todos los derechos y acciones que puedan caberme en los bienes míos que estén á nombre de mi esposo Isidro Fernandez Sanjurjo, en virtud de la tranación celebrada con mi dicho esposo."

The said last will and testament was thereupon received in evidence for the plaintiff, together with the proceedings by which it was established. The document was in Spanish, and the translation of the same into English which accompanied it is in the words and figures following, to-wit:

No. 96.

In the City of Mayaguez, on the 31st day of July, 1906, before me, Juan Quintero y Gonzalez de Quijano, lawyer and notary public of Porto Rico, with domicile and residence in this city, before the witnesses whom I name at the end,—appears Don José Sabater, Deputy Clerk of the District Court of the judicial district of Mayaguez, of full age, bachelor, and resident of this city, who has delivered to me a proceeding had in said tribunal, at the instance of Don Rafael Martinez, for the opening of the closed testament of Doña Altagracia Nadal y Freyre, which by an order dated the 28th of the current month of July is ordered to be placed in the protocol in the notarial office of the notary who countersigns it, which expediente consists of ten written sheets and a package which contains the sealed envelope, and the testament composed of four sheets; and in compliance with what is ordered I add the whole as a continuation of this act, which said Clerk signs, together with the witnesses Don Santiago Mercader and Don Quintilliano Torres, residents of this city, duly qualified, and informed of the right which the law gives them to read for themselves this document, they renounce it, and I, the notary, read it, and they affirmed and ratified its contents,—to all of which I certify.

(Sgd.)

JOSE SABATER,

Deputy Clerk.

SANTIAGO MERCADER,

QUINTILLIANO TORRES GARCIA,

LODO. JUAN QUINTERO.

38 In the City of Mayaguez, Island of Porto Rico, the 27th day of April, 1906, I, Altagracia Nadal y Freyre, a native of this city, married, sixty-four years of age, legitimate daughter of Don Esteban Nadal y Gros and Doña Micaela Freyre, both deceased, finding myself in the ossession of full understanding, express my last will under the following clauses:

(1). I, recommend my soul to the all-powerful God, who created me out of nothing.

(2). I declare that I am a Roman Catholic, in which faith and belief I have lived and shall live until my death.

(3). I declare that I am married to Don Ysidro Fernandez San-

jurjo, but he as abandoned me for nearly four years, and therefore acting upon what the Civil Code provides, he cannot have what would correspond to him in usufruct, and it is my will that he receive nothing in that character.

(4). That I have no direct heirs, and that I have never had a child, and have no ancestor, and therefore I can dispose freely of my property.

(5). I appoint as heirs of the remainder of my real property, rights and actions, my brothers Don Salvador and Don Ramon; the children of my brother, José; my nephew Don Rafael Martinez y Nadal, son of my sister Estebania, and the children of my brother Esteban, excluding my brother Don Felix and my sister Doña Dolores, because they are without children.

(6). I name as executors for the execution of my will my nephews Don Rafael Martinez y Nadal and Don Francisco del Moral y Nadal.

(7). In view of the good behavior of my nephew Don Rafael Martinez y Nadal, and considering his situation and the affection

39 which he daily shows towards me, I bequeath to him a mortgage note upon the plantation called "Margarita de Schroder" for the sum of \$5,400.00, together with all of its rights and liens; I also bequeath to my nephew Don Rafael Martinez y Nadal the legal mortgage executed by my husband in my favor over a cattle ranch situated in Guanajibo of Cabo Rojo, provided that the assignment of said mortgage which I made before a notary in favor of my said nephew, Don Rafael Martinez y Nadal, should not have been effective, and all of the rights and claims which may remain to me in my property which may be in the name of my husband, Ysidro Fernandez Sanjurjo, by virtue of the compromise entered into with my said husband.

(8). I declare that I leave the seven brick houses which I possess on 11th of August Street, called "Los Pantiones;" the lot in Los Jardines Street, and the small lots of Paris, to divide in equal shares between the heirs whom I have just named, and of this property they shall deliver to my servant Anna Ramirez, who waits upon me \$200.00, which amount I leave her as a legacy; likewise out of that property my brothers and heirs shall pay to the heirs of my deceased brother-in-law, Don Damian del Moral, an indebtedness which I have pending with him and which at this moment I do not remember the exact amount of.

(9). I bequeath to my niece Felicianita del Moral the lower story of the brick house situated on Mirasol Street, and to my nieces Carmela and Micaela del Moral the upper story of the same house.

(10). I bequeath \$100.00 for five widows who are poor and of good reputation, and \$100.00 to the San Antonio Hospital.

(11). I bequeath \$100.00 to my god-child Luis, son of Pedro Ramirez, and to my niece Estebania Nadal.

40 (12). I declare at the present time, and for the purpose of preventing them from being misappropriated by my husband, that my property is found to day in the name of my nephew, Don Francisco del Moral y Nadal.

(13). By this testament I revoke and annul all those which I may have executed prior to this act, desiring that none other than the present remain in force.

This is my closed testament, which I execute on two sheets of common paper, placing my signature on each one of its pages, it having been written at my dictation by Don Rafael Mangual y Leon, and, after having read it in full, I sign it because of being satisfied with its contents.

ALTAGRACIA NADAL Y FREYRE.

District Court of Mayaguez,

No. 1094, Civil.

RAFAEL MARTINEZ, ex-Parte.

Opening of Closed Instrument.

Whereas, on the 16th day of July, 1906, the petitioner Rafael Martinez y Nadal, appeared before the Clerk of the Court and delivered to said official a sealed envelope containing the closed testament of the deceased Altagracia Nadal y Freyre.

Whereas, the Clerk, in accordance with law, drew up the corresponding record, which was signed by the petitioner, in which there is made to appear the delivery of the said closed testament and the fact that no reason exists for belief that said package containing said
 41 testament had been opened or suffered any alteration, amend-
 ment or erasure.

Whereas, the presentation of the said testament having been reported, and the decease of the testatrix, Altagracia Nadal y Freyre, being duly proven by the certificate of death, the sitting judge ordered that citation be issued to the countersigning notary and to the testamentary witness Don Francisco Tallado, Don Juan Rivera, Don Claudino Ruiz, Don Antonio Manrique de Lara, and Don Emilio Derieux, residents of this city, for their appearance, which should be set for the 24th day of the current month at 3:00 o'clock in the afternoon.

Whereas, said witness and countersigning notary appeared before the Court on the day and hour fixed, and said closed package was placed before them, they declaring under oath that they recognized as genuine and written with their own hands their respective signatures upon said package as also the notary recognized his emblem, his signature and his rubric, and that the above mentioned package appeared in the same state in which it was when they placed their signatures.

Whereas, the sitting judge, after carrying out the procedure and solemnity of the law and proving the identity of the package, opened said package and read for himself the testamentary dispositions which it contained, and not finding in said testament any clause which prohibited the opening of the same, or any request of the

testatrix directing that there be kept secret any of the clauses which said testament contains, nor any request to the contrary, he delivered it to the Clerk of the Court, who, in a loud voice, read it word for word by order of the judge. Therefore, the requisites and

42 solemnities of the law having been complied with in this case, it is decreed and ordered by the Court that said closed testament executed by Doña Altagracia Nadal y Freyre be protocolized, together with all of the proceedings of its opening in the Registry of the subscribing notary, Juan Quintero y Gonzales de Quinjano, and ordering that there be attached to these proceedings a certified copy of the record of the stenographer of this Court where appear the statements made by the testamentary witnesses in the act of the opening of the said testament.

Given under my signature and the seal of the Court, in Mayaguez, on the 28th day of July, 1906.

YSIDRO SOTO NUSSA,

Judge of the District Court of Mayaguez.

The foregoing corresponds exactly and faithfully with the account in the protocolization and the record approving the testament of Doña Altagracia Nadal y Freyre, which under No. 95 remains in the protocol of public instruments of the year 1905 of the notarial office of Don Juan Quintero, whose protocol appears in the general archives in my custody.

In witness whereof, and at the request of Don Rafael Martinez, I issue this copy, which I sign and to which I affix my emblem and rubric on eight sheets of paper, at Mayaguez, this 11th day of July, 1909.

(Sgd.)

LCDO. MARIANO RIERA PALMER.

[Seal and Rubric]

43 And thereupon further to maintain the issues upon his part, the plaintiff introduced in evidence a certificate of the Registrar of Property of the District of Mayaguez, Porto Rico, referring to the property in controversy, which certificate was in Spanish and was accompanied by an English translation of its material parts, which is in words and figures as follows, to-wit:

Dr. Joaquin Servera Silva, Registrar of Property of this City and its mortgage district, Certifies:

That Don Juan Eugenio Geigel y Gonzalez, resident of this City, having presented himself to this Registry as the verbal agent of Don Rafael Martinez Nadal, asking that there be issued to him a literal certificate of the Second and following inscriptions of the Property No. 2,505,—

I have examined the books in my custody, by which appear the following:

That on Page 26 of Volume 49 of this Municipality Property No. 2,505, Second Inscription, there exists the following entry:

"Country property, plantation called 'Carmen,' situated in the barrio of Miradero of this Municipality, the description and liens of which appear from the First Inscription and annotation letter 'A,'

which precede, that description being the same as that which is found in the document now presented with the difference that in the latter it is said that the equivalent in metric measurement is 88 hectares, 13 areas and 89 centiareas, and the buildings on the property are not described.

44 "Don Ysidro Fernandez Sanjurjo y Skerrett, of full age, married, property holder and resident of this city is the owner of this property by purchase from Doña Elisa, Doña Dolores and Doña Rosa García Sanjurjo, as appears from the First Inscription already referred to, and by the conveyance which is the basis of the present entry he sells it to Doña Elisa García Sanjurjo for the price of \$19,000.00, of which amount \$5,600.00 are represented by the mortgage which exists upon the property sold; \$5,000.00 have been paid by the purchaser for the account of the seller to several of his creditors, and the \$8,400.00 remaining he receives in the presence of the executing notary and the subscribing witnesses, by virtue of which Doña Elisa García Sanjurjo, of full age, maiden lady, property owner and resident of this city, inscribes the dominion in the property of this number, which she acquires by title of purchase without any special condition which limits her right.

All of the above appears from the Registry and from the Deed No. 46, dated the 2nd of June, last, executed in this city before the notary Don Juan Quintero Gonzales y Quijano, the first copy of which was presented in this Registry at 4:30 P. M. on the 7th day of the current month, Entry No. 740, page 297, turned, of Volume 14 of the Day Book.

And the same being in conformity with the Registry, and the document to which I refer, I sign the present in Mayaguez on the 18th day of August, 1902.

EUGENIO GEIGEL,
Substitute Registrar.

45 That at page 84 of Volume 50 of this city appears the Fourth Inscription of the said property, which literally copied is as follows:

"Inscription No. 3, which precedes, having contained the error of stating in the description of Part No. 1, which is contained in said Inscription, that beginning at point No. 14 and crossing the road from Añasco at an angle of 50.13 degrees to an Almond tree marked with the No. 15 it measures 32.92 meters, when said distance is 33.92 meters (here follows a long statement of corrections in the detailed description of this property contained in said Third Inscription. The certificate then proceeds):

Doña Elisa García Sanjurjo, of full age, maiden lady, property holder and resident of this city, is the owner of the property of this number by reason of what is stated in the Second Inscription, which precedes, and by the conveyance upon which the present entry is based, in which it is stated that by a deed of the 3rd day of May of the current year, before the notary of this city, Don Alfredo Arnaldo, Don Ysidro Fernandez Sanjurjo assumed the obligation of selling the property of this number to the Ayentamiento of this

city for the price of \$19,000.00 of which he should receive \$15,000.00 in cash and the \$4,000.00 remaining to be paid \$2,000.00 out of the budget of 1902-03 and the remaining \$2,000.00 out of the budget of 1903-04, without the property remaining subject to any responsibility; and that Miss Garcia Sanjurjo, upon acquiring this property from Mr. Sanjurjo, assumed the obligation of complying in all of its parts with the option sale entered into by him, and that Miss

46 Garcia has received instructions from the Ayuntamiento of this city to sell the property of this number to the People of Porto Rico for the sum of \$15,000.00, said municipal corporation obliging itself to make the payment of \$4,000.00 remaining in the manner agreed upon in the deed of option sale above referred to, it being expressed that neither the People of Porto Rico nor the property of this number should remain subject to any kind of responsibility for the \$4,000.00 which the Ayuntamiento of this city is under obligation to pay him, the said Miss Garcia Sanjurjo carries out the sale under the following conditions:

(1) Doña Elisa Garcia Sanjurjo sells to the People of Porto Rico the property described in the first stating paragraph of this deed for the price of \$15,000.00 of which she acknowledges to have received \$8,500.00, the remaining \$6,500.00 being left in the possession of the purchaser on account of liens which exist upon said property, and she gives a solemn release of the price agreed upon.

(2) The People of Porto Rico enters into possession of the property sold from the month of May of the current year. By virtue whereof the People of Porto Rico, which from what appears in the document which is here inscribed, entered into the possession of the property of this number from the month of May of the present year, inscribes the dominion of this property, which it acquires by title of purchase and without any special conditions which limits its right, this deed having been accepted by Don James A. Erwin, of full age, married, Associate Judge of the District Court of this City, of which he is a resident, in which document it is stated that said gentleman takes part in its execution as the representative of the People of Porto Rico by virtue of the authority for the same which he has received from the Hon. Secretary of the Government.

47 All of the foregoing appears from the Registry and from the deed numbered 175, dated the 29th day of August, last, executed in this city before the notary Don Alfredo Arnaldo y Sevilla, which document was presented in this registry at 12:00 o'clock of said day, the 29th of August, last, Entry No. 32, page 13 of Volume 15 of the Day Book.

And it being in conformity with the Registry and the document to which I refer, I sign the present in Mayaguez on the 3rd of September, 1902. Fees \$15.50, No. 7 of the Schedule.

EUGENIO GEIGEL.

Substitute Registrar.

All of the foregoing appears from the Registry, from the deed No. 175, dated the 29th day of August, last, executed in this city

before the notary Don Alfredo Arnaldo y Sevilla, which was the one from which the inscription which is corrected by the present was made, and from the deed No. 194, dated the 20th day of the present month, executed in this city before the same notary, Mr. Arnaldo Y Sevilla, in which the errors committed are corrected or specified, which documents were presented in this Registry at 2:30 p. m. of yesterday, Entry No. 63, page 25, turned, of Volume 15 of the Day Book.

And it being in conformity with the Registry and the document to which I refer, I sign the present in Mayaguez on the 23rd day of September, 1902.

EUGENIO GEIGEL,
Substitute Registrar.

48 At the margin of the inscription above inserted there is a note which reads as follows:

Of the 6,500.00 which remained in the custody of the People of Porto Rico of the price of the sale to which the adjoining inscription refers and to respond for the liens which existed upon said property, as is stated in the entry on the margin of which the present note is made, there have been paid by the Treasurer of the Insular Government \$5,600.00 to Don Tomas Quiñones y Guzman in the payment of the mortgage which the property of this number bore in his favor according as the same appears from the Registry and from the deed numbered 20, dated yesterday, executed in this city before the notary Dr. Ramon Roura y Owen by Don Tomas Quiñones y Guzman of full age, married property owner and resident of San German, with the consent of his wife, Doña Antonia Quiñones y Quiñones, of which document a first copy was presented in this Registry at 1:00 o'clock p. m. of this day, Entry No. 609, page 230, turned, Volume 15 of the Day Book.

Mayaguez, the 16th of June, 1903.

GEIGEL,
Substitute Registrar.

(The next and final entry refers to the removal of a lis pendens, which is not material to the present controversy).

And in accordance with the petition made I issue the present certificate in Mayaguez this 17th day of June, 1909.

(Sgd.)
[SEAL.]

DR. JOAQUIN SERVERA SILVA,
Registrar of Property.

49 Thereupon the said plaintiff testified further as follows:
I was not acquainted with Fernandez Sanjurjo at the time he married my aunt, Mrs. Altagracia Nadal. They did not continue living together up to the time of my aunt's death. I was in Spain at the time they parted, and when I returned in the year 1904, they had already separated. From the time of my return in that year the relation between my aunt and myself were cordial and intimate, and she consulted me frequently about her business matters. I had knowledge of the sale made of this property in controversy by

Fernandez Sanjurjo to his niece Elisa Garcia because, at the request of my aunt about seven months prior to her death, I went to the Registry of Property to investigate the titles of that property. I have known this property since I was eleven or twelve years old. When I came back from Spain in 1904 the People of Porto Rico were already in possession it, and from 1906 I have known it to be in possession of the defendant Mr. May and conducted by him as the United States Agricultural Experiment Station. The rental value of that property from an agricultural standpoint is ten or twelve dollars per acre. It also has a further advantage from its proximity of the city, because it would be very profitable to keep cows there and run a dairy.

Upon cross-examination the plaintiff testified as follows:

I went to Spain in the year 1892 and remained there up to the year 1897, when I returned and spent six months on the Island. At that time Fernandez Sanjurjo and my aunt were still living together. He did not receive any inheritance from his grandfather. I received an inheritance from the same source as my aunt, but when I came back from Spain none of it was left. When I finally came back I lived with my aunt in the house of Salvador Nadal, her brother. By her will I was given, among other things a legal mortgage for \$5,000. I sold that mortgage to Ricardo Menendez, and he foreclosed it. I transferred it to him after the death of my aunt, and it was paid after her death. The purchaser registered the assignment I made him of this legal mortgage. I have never paid any taxes on the property in controversy.

Thereupon to maintain the issues on his behalf, plaintiff introduced as a witness FRANCISCO DEL MORAL, who, after being duly sworn, testified as follows:

My name is Francisco del Moral, and I live in Mayaguez. I know Ysidro Fernandez Sanjurjo, and I knew Altagracia Nadal in her life time. I am her nephew. They were married about twenty-five or more years ago. They sometimes lived together and sometimes separated, but they finally separated about 1900 or 1901. From that time up to the time of her death they did not live together. I have never known Ysidro Fernandez Sanjurjo to have had any occupation or devote himself to any work, except to attending to some cattle at one time.

Thereupon counsel for plaintiff propounded to the witness the following interrogatory:

"Do you know, from statements made by Ysidro Fernandez Sanjurjo to you, whether or not he had any property at the time of his marriage to your aunt?"

Whereupon counsel for defendant said, "I object to that," which objection was sustained by the Court, to which ruling of the Court counsel for plaintiff took an exception.

Witness continued: After I grew up I came to know of the property interests and conditions of my aunt and her husband, because of my relations to them. My aunt inherited after her marriage to

Sanjurjo from her father and mother about One Hundred and Twenty-one pesos provincial money. She never managed any part of it after she inherited it, but her husband managed it. So far as I know, the only part of that identical property which remained either in his or her ownership at the time of her death was a masonry house on Mirasol Street.

Upon cross-examination, said witness testified as follows:

Fernandez Sanjurjo and my aunt finally separated in 1900 or 1901 and never lived together afterwards. After that separation I think he got no money belonging to his wife. He acquired the property in controversy in 1902.

Upon re-direct-examination, the witness testified:

I know of my own knowledge that before the separation between Sanjurjo and his wife he had sold all the property that his wife had inherited.

Upon re-cross-examination, the witness testified:

From the time of the separation, from her husband to the time of her death my aunt lived in Mayaguez with my mother and myself, and at other times with her brother Salvador Nadal. This was near the property in controversy, because that property is on the outskirts of the town and she lived in the town. She did not live in sight of the property, but she knew that it had been sold to the People of Porto Rico.

Thereupon further to maintain the issues upon his part, plaintiff introduces in evidence certified copy of the deed dated the 2nd of June, 1902, executed by Ysidro Fernandez Sanjurjo in favor of Elisa Garcia for the property claimed by him, together with a true translation of the same from the Spanish language into English, which translation is in words and figures following, to-wit:

No. 46.

In the City of Mayaguez, on the 2nd of June, 1902, before me, Juan Quintero y Gonzalez de Quijano, lawyer and notary of the College of Porto Rico, residing in this city, appear of the first part Don Ysidro Fernandez Sanjurjo y Skerrett, married; and of the second part Doña Elisa Garcia Sanjurjo, unmarried, both of full age, property holders, and residents of this city. I certify to my acquaintance with, and to the profession and residence of the appearing parties, and, having in my judgment the legal capacity necessary for the execution of this deed of sale,—Mr. Fernandez Sanjurjo states:

(1). That he is the owner of the following real estate: the plantation "Carmen," of 224.25 cuerdas, equivalent to 88 hectares, 13 areas, and 89 centiareas, dedicated to coffee, pasture, cane and woodland, situated in the barrio of Miradero, municipal and judicial district of this city, with a dwelling house of wood, covered with zinc; brick buildings, stables, a storehouse, and several houses for employees, large barns, and an irrigation concession,—which is bounded: On the north by the brook called "Oro" and the farm of Don Francisco Ramos, the widow of Rocafort, the

heirs of Lacourt, and Olivieri Brothers; on the east by a neighborhood road, by lands of Adolfo Gomez, Juan Luciano, another neighborhood road, and lands of Genaro Cartagena, Manuel Bengoa and Pedro Agostini; on the west by lands of the old plantation "Carmen," the brook called "Oro," lands of Don Antonio Lopez, Don Juan Rolan, Don Francisco Barrero, and Don Ramon Ruiz, the neighborhood road from Añasco, lands of Don Luis Cartagena, and the highway from Añasco; and on the south by the River Yaguez and lands of Misses Garcia Sanjurjo.

Title.

(2). That he acquired said plantation by title of purchase from Doña Elisa, Doña Dolores, and Doña Rosa Garcia Sanjurjo, by a deed executed before my companion, Don Alfredo Arnaldo, under date of the 19th of April of the present year.

Liens.

(3). That upon the described plantation exists a mortgage for \$5,600.00 in favor of Don Tomas Quiñones.

Option.

(4). That by a deed executed before the notary Don Alfredo Arnaldo on the 3rd of May of the present year, it was agreed to sell the described plantation to this city for the price of \$19,000.00, to be paid in the manner which was agreed upon in said deed.

54

Contract.

(5). That complying with what has been agreed upon, he sells to the Party of the Second Part the described plantation under the following:—

Conditions.

(1). Don Isidro Fernandez Sanjurjo y Skerrett sells to Doña Elisa Garcia Sanjurjo the plantation which has been described in the first stating paragraph for the price of \$19,000.00, of which amount \$5,600.00 represents the mortgage which exists upon the property sold; \$5,000.00 have been paid by the purchaser for the account of the seller to various creditors of his; and the \$8,400.00 remaining he receives before me and in the presence of witnesses.

(2). The purchaser shall be obliged to comply in all of its parts with the option referred to in the Fourth stating paragraph, under the same conditions as the seller, Don Alfredo Arnaldo being authorized to continue in negotiating said sale.

(3). The purchaser shall enter into possession of the plantation which is sold to her from the execution of this deed.

(4). For the making of any claims to which this contract may give rise the contracting parties expressly submit themselves to the tribunals of this city.

(5). Doña Elisa Garcia Sanjurjo accepts this deed in all of its parts.

And I give notice to them that in favor of the State, the Island and the Municipality there remains reserved a preferential
 55 legal mortgage for the collection of the taxes due and unpaid for the last annual assessment, that they must present a copy of this deed in the Registry of Property for its inscription, since without the requisite it will not prejudice the rights of a third person nor be admissible in the offices of the government, the courts or the tribunals.

Thus they execute and sign it before the witnesses Martin Mas and Don Agostin Hernandez, residents of this city, after I had read this deed to them, informing them of the right which they had, and which they declined, of reading it for themselves.

To all of which I certify.

YSIDRO F. SANJURJO.
 ELISA GARCIA SANJURJO.
 MARTIN M. MAS.
 AGOSTIN HERNANDEZ.
 LCDO. JUAN QUINTERO.

The foregoing corresponds faithfully with the original which, under the No. 46, appears in the protocol of public instruments of the year 1902 of the notarial office of Juan Quintero, whose protocol is found in the general archive in my custody.

In witness whereof, and at the request of Don Francisco del Moral, I issue this copy, which I sign and to which I affix my emblem and rubric on five sheets of paper, in Mayaguez the 29th day of May, 1909.

[Seal and Rubric.]

LCDO. MARIANO RIERA PALMER.

56 Thereupon further to maintain the issues upon his behalf, plaintiff introduced in evidence the schedule of property set apart to Altagracia Nadal y Freyre, shown by the notarial certificate of the division of the inheritance from her father and mother, which was in the Spanish language, and a true translation in to the English language of that part of said notarial instrument showing the property so set apart to her is in words and figures following, to-wit:

(Translation.)

Schedule of the Heir, Doña Altagracia Nadal y Freyre de Fernandez Sanjurjo.

The assets of this party in interest consist of the following:

The one-ninth part of the capital of both legitimate shares, one hundred and twenty-one thousand one hundred and ninety-six pesos and ninety-seven centavos and five-ninths of a centavo

121,196.97 5/9

For the payment of this there is adjudicated to her the following:

The undivided interest of a one-ninth part in the products of the Hacienda Estabania inventoried under No. 42, seven hundred and sixty-five pesos eighty-two centavos and seven-ninths of a centavo.....	765.82 7/9
The undivided interest of a one-ninth part in the real property of the Hacienda Estebania 57 inventoried under Nos. 44, 45, 46 and 47, four hundred thirty-seven pesos eighty-eight centavos and eight-ninths of a centavo...	437.88 8/9
The undivided interest of a one-ninth part in the lands containing the buildings in the Hacienda Estebania, valued at one hundred twenty-eight thousand one hundred and eighty-one pesos and ninety-seven centavos, said property being described and specified in the inventory under No. 48, Fourteen thousand two hundred and forty-two pesos forty-four centavos and one-ninth of a centavo.....	14,242.44 1/9
The undivided interest of a one-ninth part in the half of the Hacienda Cuatro Hermanos, valued in its entirety at thirty thousand five hundred and twenty-eight pesos and fifty-four centavos, described and specified in the inventory under No. 51, one thousand six hundred and ninety-six pesos two centavos and four ninths.....	1,696.02 4/9
The undivided interest of a one-ninth part in the fourth belonging to the inheritance of the Hacienda Constancia, valued in its entirety at fifty-four thousand seven hundred and fifty pesos and sixty-five centavos, described and specified in the inventory under No. 50, 58 one thousand five hundred and twenty pesos eighty-five centavos and one ninth	1,520.85 1/9
The undivided interest of a one-ninth part in the lands of the farm Carolina, valued at four thousand nine hundred and forty-four pesos and eighty centavos, described and specified in the inventory under No. 49, five hundred and forty nine pesos forty-two centavos and two-ninths...	549.42 2/9
The undivided interest of a one-ninth part in the third corresponding to the inheritance of the dwelling house on the farm Carolina, specified in the inventory under No. 49 and valued at three hundred pesos, eleven pesos eleven centavos and one-ninth.....	11.11 1/9

The undivided interest of a one-ninth part in the fourth of the tract of land situated in the Hacienda San Romualdo referred to in the inventory under No. 52 and valued at one hundred pesos, eleven pesos eleven centavos and one-ninth	11.11 1/9
A one story brick house situated on Mirasol street of this city, marked as No. 56, consisting of the central portion of the building of which it forms a part and is found inscribed separately and also separately valued and inventoried under No. 62, six thousand eight hundred and eighty-six pesos and eighteen centavos.....	6,886.18
59 The undivided interest of a one-ninth part of a two story brick house with a wooden frame, situated on Mendez Vigo street of this city, marked as No. 74, described and specified in the inventory under No. 59, and valued at fourteen thousand five hundred and sixty-nine pesos and thirty centavos,—one thousand six hundred eighteen pesos eighty-one centavos and one-ninth	1,618.81 1/9
The undivided interest of a one-ninth part in the storehouse in the marina of this city, marked with the No. 25 of Comercio street with its lot and appurtenances, which property has been valued at the sum of twenty-eight thousand eight hundred and fifty-six pesos and eighty-eight centavos, and is found and described and specified in the inventory under No. 68,—three thousand thirty-six pesos and sixty-six centavos two centavos	3,206.32
The undivided interest of a one-ninth part in the curing house which is used as a warehouse for sugar situated with its front on Comercio street of this city on a lot which reaches to the sea, which property has been valued at seven thousand thirty-six pesos and sixty-six centavos and is found described and specified in the inventory under No. 54,—seven hundred and eighty-one pesos eighty-five centavos and one-ninth	781.85 1/9
60 Three shares in the India and Panama Cable Company, Limited of a par value of ten pounds each, estimated at one pound and five-eighths, of those inventoried under No. 94,—twenty-four pesos thirty-seven centavos and a half	24.37 1/2
Two shares in the Theater Company in Mayaguez of a par value of eighty pesos each, estimated at fifty per cent of those inventoried under No. 95 —eighty pesos	80.00

Seven shares in the Sixth Avenue Company of New York, par value one hundred pesos each, estimated at one-hundred and seventy-seven per cent of those inventoried under No. 99,—one thousand two hundred and thirty-nine pesos. . .	1,239.00
The undivided interest of a one-ninth part in sixty instalment shares in the Spanish Bank of Porto Rico, of a par value of one hundred pesos each, of which only twenty-five per cent has been paid in, inventoried under No. 97, her proportion of one thousand five hundred and seventy-five pesos forty-three centavos and eight ninths.	175.43 8/9
The undivided interest of a one-ninth part in the remainder of one hundred and eighty-seven shares in the Sociedad Anonima de Credito Mercantil de Puerto Rico, upon eight 61 of which there remains due twenty-six per cent, inventoried under No. 98, five hundred and forty pesos twenty-two centavos and two-ninths	540.22 2/9
The undivided interest in one-half of certain five per cent Russian bonds amounting to four thousand four hundred pounds, par value estimated at one hundred and sixteen and three quarters per cent, inventoried under No. 37, twelve thousand nine hundred fifty-nine pesos and twenty-five centavos	12,959.25
Bond of the German Empire, issue of the year 1880, at three and one-half per cent, amounting to twenty thousand Prussian marks, estimated at ninety-eight and nine-tenths per cent, inventoried under No. 33, four thousand nine hundred and forty-five pesos.	4,945.00
A portion of the account with the Colonial Company, Limited, inventoried under No. 75, twelve hundred and twenty-five pounds, six shillings four pence,—six thousand one hundred and twenty-six pesos fifty-eight centavos and six ninths	6,126.58 6/9
Seven per cent bonds of the city of Cincinnati amounting to three thousand pesos par value, estimated at one hundred and eighteen per cent, inventoried with others under No. 6,—three thousand two hundred and seventy pesos.	3,270.00
Seven per cent bonds of the city of Cincinnati amounting to a thousand pesos par value, estimated at one hundred and eighteen per cent, inventoried with the previous lot under the same number,—one thousand one hundred and eighty pesos.	1,180.00

Six per cent bond of the United New Jersey Canal & Railroad Company amounting to ten thousand pesos par value, estimated at one hundred and eighteen per cent, inventoried under No. 23, eleven thousand eight hundred pesos.....	11,800.00
Five per cent bonds of the city of Pittsburg amounting to three thousand pesos par value, estimated at one hundred and seventeen per cent, inventoried under No. 5,—three thousand five hundred and ten pesos.....	3,510.00
Four per cent bonds of the Michigan Central Railroad amounting to ten thousand pesos par value, estimated at par, inventoried under No. 15, ten thousand pesos	10,000.00
A portion of the cash desposit with the United States Trust Company, inventoried under No. 80, eight thousand nine hundred and thirty-three pesos, ninety centavos and three-ninths..	8,933.90 3/9
A pin with diamonds and emeralds inventoried under No. 40, letter E, two hundred pesos.....	200.00
A cluster of diamonds inventoried under the same number, letter G, three hundred and ten pesos. .	310.00
A ring with one emerald, inventoried under the same number, letter I, twenty-five pesos.	25.00
63 A pair of gold bracelets inventoried under the same number, letter L, sixteen pesos.	16.00
A gold trinket inventoried under the same number, letter M, eleven pesos.....	11.00
A gold pin under the same number, letter N, sixteen pesos	16.00
A pair of gold ear-rings under the same number, letter O, two pesos.....	2.00
A pin and a pair of gold ear-rings under the same number, letter S, twenty pesos.....	20.00
The undivided interest of a one-ninth part in the cross of the Military Merit and in the great cross of Isabel the Catholic, inventoried under the same number, letters Z and AA, seventy-six pesos forty-four centavos and four ninths....	76.44 4/9
The undivided interest of a one-ninth part in silver table ware, inventoried with others under No. 41, one hundred and eighty-nine pesos twenty-two centavos and two ninths.....	189.22 2/9
Furnishings in a cemetery vault inventoried under No. 43, six hundred and forty-eight pesos.....	648.00
The undivided interest of a one-ninth part in thirty-four bonds of the Treasury of Porto Rico, par value one hundred pesos each, Spanish money, inventoried under No. 2, estimated in their entirety at three thousand five hundred	

seventy-nine pesos seventeen centavos,—	
64 three hundred ninety-seven pesos sixty-eight centavos and five ninths.....	397.68 5/9
The undivided interest of a one ninth part in the current account of Latimer & Company, which amounts to fourteen thousand three hundred and sixty-six pesos and sixty centavos, inventoried under No. 89,—one thousand five hundred and ninety-nine pesos sixty-two centavos and two-ninths	1,599.62 2/9
The undivided interest of a one-ninth part in two notes Don Carlos Monages Pesante amounting to four hundred pesos, inventoried under No. 91,—forty-four pesos forty-four centavos and four ninths	44.44 4/9
The undivided interest of a one-ninth part in three notes of Don José R. Castro, amounting to one thousand three hundred twenty-two pesos fifty centavos, inventoried under No. 92, one hundred forty-six pesos ninety-four centavos and four ninths	146.94 4/9
The undivided interest of a one-ninth part in the mortgage credit against Don Emilio and Don Ernesto Patxot, which amounts to ten thousand thirty pesos thirty-one centavos, inventoried under No. 90,—one thousand one hundred and fourteen pesos forty-seven centavos and eight-ninths	1,114.47 8/9
The amount of her advances from her legitimate share, which is brought into the settle-	
65 ment in order to deduct from her assets, as is provided in the seventh supplement, ten thousand one hundred eighty-seven pesos fifty-seven centavos	10,187.57
The undivided interest of a one-ninth part in the separate account in the Spanish Bank of Porto Rico, inventoried under No. 87, two hundred eighteen pesos sixteen centavos and six-ninths. .	218.16 6/9
Part of the cash on hand inventoried under No. 1, two thousand five-hundred eighty-seven pesos forty-seven centavos	2,587.47
Part of the current account with Moral Gonzalez & Company, inventoried under No. 84, six thousand eight hundred seventy-five pesos thirty-one centavos	6,875.31
The total amount of one hundred and twenty-one thousand one hundred and ninety-six pesos ninety-seven centavos and five-ninths of a centavo	121,196.97 5/9
Whereby her share is paid.....	" " " "

Whereupon counsel for plaintiff announced that he closed his case.

And thereupon counsel for defendant proceeded to offer evidence, to which objection was made, the terms of the offer and objection being shown by the following proceedings, to-wit:

66

Testimony for the Defense.

Mr. BROWN: Now, may it please Your Honor, I offer in evidence as Exhibit No. 1, deed executed by Pedro Rosello Irizarry, to Isidro F. Sanjurjo, dated the 25th of October, 1900.

The COURT: That is the husband and wife?

Mr. BROWN: No, sir; this is the original purchase by Sanjurjo. Sanjurjo purchased this property in 1900 from Rosello. My purpose is to go back to the first inscription of this property in the office of the Registrar of Property and to establish that in the Registry of Property there was a perfectly clear title, and the People of Porto Rico when they bought that property, bought a perfectly clear title, and in order to do that I go back to the first inscription and that is where Sanjurjo bought the property of Rosello.

The COURT: Sanjurjo is the husband?

Mr. BROWN: Yes sir; and this is the deed by which he first bought the property.

Mr. PETTINGILL: We object to this as immaterial because the testimony has already shown that the claim of the plaintiff is based upon an ownership by Sanjurjo acquired subsequently dated the 19th day of April, 1902, and an attempted sale by Sanjurjo, the husband, of the title then acquired, by his deed of the second
67 of June, 1902. Therefore the proof of any previous title is immaterial to the issues in this case.

The COURT: They are simply going back a little, Mr. Pettingill in the chain of title, perhaps unnecessarily. I don't think myself that it is absolutely necessary, but they start in now to trace the title and to defeat one of your theories.

Mr. PETTINGILL: Yes, and if I am not mistaken, it is an endeavor to show an equitable defense.

The COURT: No, we won't let that get in here. The objection is overruled and the document is received.

To which ruling of the Court plaintiff, by his counsel, did then and there except.

The document so offered and admitted in evidence was in the Spanish language, and a true translation thereof into the English language is in words and figures following, to-wit:

Mariano Riera Palmer
Lawyer—Notary
Mayaguez, P. R.

Copy.

Number Four Hundred and Eight.

Corrected.

In the city of Mayaguez, on the 25th day of October, 1900, before me, Licenciado Alfredo Arnaldo y Sevilla, Notary Public of Maya-

guez and of the Association of Porto Rico, with the witnesses whom I shall mention at the end, appear of the one part Perdo
68 Rosello é Irizarry, of age, married and a property owner, and of the other Isidro F. Sanjurjo y Skerrett, of age, married, and a property owner, and both are residents of this city. I certify that I know the gentlemen appearing before me, also their occupations and residence, and they inform me that they are in the full enjoyment of their civil rights, and both having in my judgment the necessary legal capacity to execute this deed of purchase and sale, they state:

Property.

First. That Pedro Rosello is the owner of the following rural property, to-wit, a tract of high and low land with an area of two hundred and thirty-nine cuerdas, and four hundred and eighty-six thousandths of another, equivalent to ninety-four hectares, twelve ares, and seventy-three centares, situated in the barrio of Miradero of this municipal district and called the plantation "Carmen," which has a frame dwelling house, roofed with galvanized iron, and a masonry building which was formerly used as a sugar boiling and purging house; sheds for the making of bricks, and in addition other constructions in said area; furthermore, there belonging to him the irrigation which the former plantation Carmen had, less that part which corresponds to the Agricultural Station. All this is bounded on the north by the Oro brook, Francisco Ramos, the widow of Rocafort and the said brook; estate of Elisa Lacour and Olivieri Hermanos; on the east by the vecinal road, lands of Adolfo Gomez, Juan Luciano, another vecinal road, Genaro Cartagena, Manuel Bengoa, and Pedro Agostini; on the west by segregated lands which formed
69 part of the present property, the Oro brook, Antonio Lopez, Juan Roland, Francisco Borrero, Ramon Ruiz, a vecinal road to Añasco, Luis Cartagena and the Añasco highway; and on the south by the river Yaguez, a lot of Mercedes Segarra de Soto, Isidro Sanjurjo, a lot of Pedro Rosello (formerly of Felix Gonzalez), a street in project on lands of Cartagena Hermanos, lands of the Agricultural Station and the others of Agostini Hermanos.

The difference which exists in the southern boundaries is due to the fact that from this side there was segregated and sold a lot of one thousand square meters (having a frontage of twenty and a depth of fifty) to Mercedes Segarra de Soto, on which there is an unfinished masonry building on account of its erection having been suspended; and another lot which Pedro Rosello segregates, excludes from this sale and separates for himself, having an area of one thousand and twenty square meters, that is, twenty-four meters to the west facing the road which from the Cartagena bridge goes in a straight line toward the buildings of the plantation Carmen; another twenty-four meters on the east and forty-two and a half meters on the north, boundary of the lands with the main portion which is alienated to Isidro Sanjurjo; and an equal forty-two and a half meters to the south adjoining the house of Felix Gonzalez and the street in project in the direction of the Agricultural Station.

Title.

The two thousand and twenty square meters, equivalent to five hundred and fourteen-thousandths of a cuerda, which are contained in the two lots separated, added to the greater area first described, make up the total of two hundred and forty cuerdas, which with the buildings and appurtenances thereon were acquired by 70 Rosello e Irizarry in exchange with Salustiano Collado y Morales, also a property owner of this city, by deed of the 26th day of December, one thousand eight hundred and ninety-six, executed by the former notary of this city, Juan Zacarias Rodriguez, recorded in the Registry of Property by means of an addition dated July 2, 1898, certified to by the said notary.

Encumbrances.

From the data presented for the execution of this contract it develops that the property which is described is mortgaged for sixteen thousand pesos, provincial money, in favor of Genaro Cartagena y Mangual, resident here, for which Rosello is responsible, obligated to pay them in installments of four thousand pesos, on the 15th of February, 1899, last past, for four years to 1902, and which is also mortgaged in favor of the former owner Salustiano Collado, for eight thousand pesos which Rosello is obligated to pay in two parts, to-wit, four thousand pesos on the 15th of February of the years 1903 and 1904. In so far as concerns the instalment of four thousand pesos due in February of 1899, Pedro Rosello claims to have paid it, and that the mortgage, in so far as refers to it, is cancelled.

Second. That by a private instrument recorded on the eighth of the current October Pedro Rosello sold to Sanjurjo the property hereinbefore described, (with some other personal property and domestic animals) for the price and under the conditions which, so that it may be set out in an authentic manner, they proceed to set forth, with other agreements and secondary requisites, in the following clauses:

First. Pedro Rosello sells and grants in perpetuity to 71 Isidro F. Sanjurjo the property called plantation Carmen, described in the first statement of fact of this contract, with all its appurtenances, real and personal rights, including the irrigation before mentioned, with the limitation stated, and what ever more may belong to it without reservation, for the agreed price of thirty-one thousand provincial pesos, equivalent to eighteen thousand six hundred dollars, which are payable as follows: Rosello declares that he received at the time of the transaction five thousand pesos (three thousand dollars) in the assignment which, by deeds of this date in this protocol Sanjurjo makes in his favor of two mortgage credits with interest, one of four thousand pesos against Diego Garcia Saint Laurent, and the other of one thousand pesos for which Jacinto Zapatero is responsible. The purchaser, Isidro, reserves twelve thousand pesos (seven thousand two hundred dollars) with which he shall pay Genaro Cartagena, or his legal successor, his instalment of four thousand pesos which will fall due February 15,

1902, and to Salustiano Collado, or his successors in interest, his credit of eight thousand pesos, divided into two instalments on February 15 of 1903 and 1904. Four thousand pesos (two thousand four hundred dollars) which Isidro shall pay to the vendor, Pedro Rosello, in cash, on the 15th of February, 1905, the said plantation which is sold being mortgaged to secure this obligation.

Lastly, Pedro Rosello shall also receive ten thousand pesos in the following manner: five thousand (three thousand dollars) which Manuel Mendez y Dueño of Juncos shall pay in cash at San Juan, Porto Rico, on the 30th day of the coming month of November, and the other five thousand which the said Mendez shall pay him in this city in two instalments of two thousand five hundred pesos

72 (one thousand five hundred dollars) on the 30th of November of each of the years 1901 and 1902, secured by mortgage on the property sold by Sanjurjo to Manuel by another private contract dated the 10th of the current month, which they shall convert into an authentic deed, the which I, the notary, transcribe at the request of the parties, and which says, literally, "Be it known from the present document which we wish to have the same force as if it were judicial, that we, the undersigned, Isidro F. Sanjurjo, Manuel Mendez y Dueño and Pedro Rosello e Irizarry, in the presence of Carlos García Buso and Miguel Reinoso, have entered into the following agreement:

"First, Isidro F. Sanjurjo says that he sells to the second party, Manuel Mendez y Dueño, a farm which he has in the barrio of Quebrada Arena and Boqueron of the district of Humacao, and which has an area of four hundred and thirty cuerdas, five per cent. more or less, with all the horses thereon and besides some head of cattle, all for the sum of ten thousand provincial pesos, to-wit, six thousand dollars, payable in the following manner: On the 30th day of the coming month of November of this year, the sum of five thousand provincial pesos, to-wit, three thousand dollars, and the remaining five thousand pesos in equal parts, to-wit, two thousand five hundred provincial pesos, which are one thousand five hundred dollars, on the same day and month of the coming year, 1901, and the two thousand five hundred provincial pesos, which are one thousand five hundred dollars, on the same day to-wit, on the 30th day of November, 1902. The horses and cattle generally, as well as the property which has been mentioned, has been on this day delivered to the purchaser Mendez. This agreed price of ten thousand provincial pesos, that is, six thousand dollars, payable

73 in the manner which has been said, Mendez shall deliver to Pedro Rosello for my account. The number of domestic animals sold and delivered is one hundred and sixty horses and sixteen cattle, it being understood that if any have remained on the property, which on account of the hurry were not seen, shall also belong to the purchaser Mendez Dueño. The deed to this property, as also the identification cards of the horses and cattle, I shall deliver on the day fixed for the first payment of the transaction, to-wit, on the 30th day of the coming November of the current year, the

price being delivered, as also all the documents referred to, at the city of San Juan, Porto Rico, on the dates indicated.

"Second. Manuel Mendez y Dueño states that in conformity with which has been said by the vendor, Isidro F. Sanjurjo, he obligates himself to pay, as he is ordered to do, to Pedro Rosello, at San Juan, Porto Rico, the sum of ten thousand provincial pesos, to-wit, six thousand dollars, on the dates agreed upon, which are the 30th of the coming November of the current year, three thousand dollars, and the remaining three thousand dollars in two equal instalments, that is, one thousand five hundred dollars on the 30th of November of the coming year of one thousand nine hundred and one, and the last one thousand five hundred dollars on the 30th day of the following November of the year one thousand nine hundred and two.

"Third. Pedro Rosello e Irizarry says that in conformity with this document, at the time when the money is delivered, that is, the three thousand dollars which Mendez is to deliver to me, I shall put

Sanjurjo in possession of the property which I have sold him
74 in Mayaguez, as I also accept the obligation of the two instalments spoken of in this document, together of the value of another three thousand dollars of the sale which Sanjurjo has made, the vendor Sanjurjo remaining obligated to guarantee and warrant the lands sold, and the instalments agreed upon. We the three subscribers, state: That in the presence of the witnesses who sign this document, we have agreed upon what is set forth, and we obligate ourselves mutually to fulfill exactly all we have agreed upon, as also to give this extrajudicial document, until it has been converted into a public document, the same force and value as if it were a judicial one. So that all this may be set forth we sign a like document for each one of the contracting parties at the plantation Solitaria on this day the 10th of October, in the year one thousand nine hundred. Isidro F. Sanjurjo, Manuel Mendez, P. Rosello e Irizarry.—Witness: Carlos C. Garcia Buso—Witness: Miguel Reinoso." The attached document agrees with the original, to which I refer, which I have returned to the party presenting the same, after having placed thereon the seal of this notarial office and rebriacted it.

Second. Pedro Rosello formally promises to pay to Genaro Cartagena, or his legal representatives, the two instalments of four thousand pesos each, the first due on the 15th of February of the present year, and the second on the 15th of February one thousand nine hundred and one; and to obtain as a result thereof the cancellation of the mortgage in so far as concerns those two instalments on the property which Sanjurjo acquires. And in case
75 that by failure of Rosello to carry out his agreement, Isidro should be called upon to pay; the latter is authorized to retain the four thousand pesos which as part of the price he is to pay to the vendor in February of one thousand nine hundred and five; and, furthermore, to intervene and enjoin the payment of the five thousand pesos on the mortgage of Manuel Mendez which for this purpose Rosello leaves at his disposal, and therefore the payment of this last sum is subordinated to the fulfilment of the

said obligation, the simple written notice of the contracting parties to the debtor being sufficient therefor.

Third. The contracting parties fix as a limit for the difference which there may be in the number of cuerdas in which the land sold may be less than the exact measure, five per cent. more or less. Therefore, the contracting parties cannot reclaim from each other providing that the true area shall appear embraced within the proportion agreed upon.

Fourth. As the delivery of the three thousand dollars, extended to the end of November, as also the formal constitution of the mortgage for the other three thousand, depends upon a third person, who through some contingency which might arise during the period, might be prevented from fulfilling both obligations; and likewise the date of the giving of the corporal possession to Sanjurjo of the property which he is buying depends precisely on the fact of those obligations being carried out according to the attached contract; nevertheless Rosello agrees, at the request of and as a favor to the other party to the contract, to deliver to the latter at once, but with certain reservations, the plantation Carmen, the possession of which shall be considered definite as soon as the third party Manuel Mendez fulfills his promise to pay in cash and the mortgage is finally constituted.

Fifth. To complete the mortgage obligation on the plantation Carmen relative to the four thousand pesos pending payment to Rosello, as part of the price, the signers constitute, also by mortgage another credit of five hundred dollars to pay the costs and expenses in case of judicial claim; and they place a value on the plantation, in accordance with article 127 of the Mortgage Law, at the same price of thirty-one thousand pesos.

Sixth. Because on behalf of the American government favorable offers have been made to buy the plantation Carmen from Rosello, Sanjurjo being substituted for Rosello in the property, accepts in principal the said promises, with the reservation that in a given case, he as owner shall decide freely.

Seventh. The contracting parties state that the thirty one thousand pesos, as the price stated, is the just and true value of the land and the appurtenances which are sold, and that this deed once recorded in the registry of property it shall not be annulled or rescinded to the prejudice of third parties on account of any of the reasons stated in article 38 of the Mortgage Law.

Eighth. The contracting parties choose this city as their residence for all acts to which the fulfillment of this contract may give rise, and submit themselves expressly to the courts thereof.

Ninth. Isidro Sanjurjo y Skerret accepts this deed, with the mortgage and other obligations stated. On this basis the parties appearing give form to this contract of purchase and sale, which they obligate themselves to fulfill faithfully in all its parts, under the obligations to pay all costs, damages and losses which might arise by failure so to do. And I the notary warned them as follows: That there was reserved in favor of the state or province and the municipality of this city a prepared legal mortgage which they have over any other creditor for the payment

of the last annual taxes, and not paid on the plantation the subject of this contract. That of this document a note shall be made in the registry of property of this city, because without this requisite there can be no defense against a third party, neither would it be admissible in any tribunal, council or office of the government. Thus they with the witnesses Diego Garcia, Saint Laurent and Jose Maria Seda, residents of this city, executed and signed this document, after I had read it to all of them and informed them of their right to read it for themselves, to all of which I certify. P. Rosello Irizarry.—Isidro F. Sanjurjo.—D. Garcia St. Laurent.—J. M. Seda.—Signed, Alfredo Arnaldo. This corresponds well and faithfully with the contents of the original deed, which under the number 408 is in the protocol of public instruments in the notarial office which formerly was of Alfredo Arnaldo, corresponding to the year one thousand nine hundred, which protocol is today in my general archives as the archive keeper of the district. I certify to this and at the request of the Honorable Attorney General I execute this copy, which I signet, sign and rubricate on fourteen pages of paper, at Mayaguez, on the twenty-eighth day of October of one thousand nine hundred and ten.

[Notary's Seal and Excise Stamp.]

LCDO. MARIANO RIERA PALMER.

78 Doctor Joaquin Servera Silva, registrar of property of this city and its judicial district, I certify that the foregoing instrument was recorded in so far as concerns the sale and the mortgage, from a copy of the same, on the seventh day of December, of one thousand nine hundred, at folio 15 of Vol. 45 of this city, property No. 2350, first inscription. At the request of the Honorable Attorney General, in a matter concerning the People of Porto Rico, I issue these presents free of all charges on the second of November of one thousand nine hundred and ten.

DR. JOAQUIN SERVERA SILVA.

[Seal of the Registrar of Property of Mayaguez.]

Thereupon further to maintain the issues on his behalf, counsel for defendant offered in evidence a deed from Isidro Fernandez Sanjurjo to Federico Phillippi, dated April 26, 1901, to the admission of which in evidence counsel for plaintiff objected on the same ground as to the deed last offered, which objection was overruled, and to the ruling of the Court counsel for plaintiff excepted.

The document so offered and admitted in evidence was in the Spanish language, and a true translation thereof into the English language is in words and figures following, to-wit:

79

Mariano Riera Palmer,
Lawyer-Notary,
Mayaguez, P. R.

Copy.

Corrected.

One hundred and fifty-one.

At the city of Mayaguez, on the twenty-sixth of April, one thousand nine hundred and one, before me, Alfredo Arnaldo y Sevilla, lawyer and a notary of the association of Porto Rico, residing in this city, appear of the one part Isidro Fernandez Sanjurjo y Skerrei, of age, married, property-owner and a resident of this city and of the other Federico Philippi y Kestner, of age, widower, merchant and a resident of this city also. I certify that I know the parties appearing before me and also their occupations and residents, and they having in my judgment legal capacity to execute this deed of sale of property and assignment of mortgage credit, Fernandez Sanjurjo says:

Properties.

First. That he is the owner of the following properties: A rural estate that is a tract of high and low land with an area of two hundred and thirty-nine cuerdas and four hundred and eighty-six-thousandths of another, equivalent to ninety-four hectares, twelve ares and seventy-three centares, situated in the barrio of "Miradero" of this municipal district, and called the plantation "Carmen," with its frame dwelling house roofed with galvanized iron, a masonry building which was once used as a sugar boiling and purging house,

sheds for the making bricks and other structures in said area; the irrigation which the former plantation "Carmen"

had, less that part which belongs to the agricultural station, belonging to him also. All this is bounded on the north by the "Oro" brook, Francisco Ramos, widow of Rocafort, the said brook, estate of Elias Lacourt and Olivieri Hermanos; on the east by a vicinal road, lands of Adolfo Gomez, Juan Luciano, another vicinal road, Genero Cartagena, Manuel Bengoa and Pedro Agostini; on the west by segregated lands which formed part of the said plantation, the "Oro" brook, Antonio Lopez, Juan Roland, Francisco Borrero, Ramon Ruiz, a vicinal to Añasco, Luis Cartagena and the Añasco highway; and on the south by the river "Yaguez," a lot of Mercedes Segarra de Soto, Isidro Sanjurjo, a lot of Pedro Roselló (formerly of Felix Gonzalez), a street in project on lands of Cartagena Hermanos, lands of the Agricultural Station and others of Agostini Hermanos.

Second. Broken sugar cane land, having some fruit trees, situated in the barrio of "Guanajibo," municipal district of Cabo Rojo, judicial district of this city. It is bounded on the north by pasture and wooded lands of Tomas Binet and Federico Puig; on the east by those of the said Federico Puig; on the south by those of Tomas Binet, and the rural road which goes to "Boca Nacilla," and on the west by the rural road which goes to the place called "Quintana" and which passes by the house of Tomas Binet. It has an area of five hectares, eighty-nine ares and fifty-six centares.

Third. A rural property consisting of broken sugar cane land, which has some palm-leaf, palms and some fruit trees, situated in the barrio of "Guanajibo," municipal district of Cabo Rojo, 81 judicial district of this city. It is bounded on the north, east and south by pasture and brush land belonging to Luis Silva y Ramirez; and on the west by the rural road which goes to a place called "Quintana." It has an area of three hectares, ninety-three ares and four centares.

Fourth. A tract of land having an area of eight cuerdas (three hectares, fourteen ares and forty-three centares). It has pasture lands and fruit trees, and is situated in the barrio of "Guanajibo," municipal district of Cabo Rojo, judicial district of this city, and is bounded on the north by the river "Estero;" on the south by lands of Tomas Binet, and on the east and west by Binet and the said river.

Fifth. A parcel of pasture land situated in the barrio of "Guanajibo," municipal district of Cabo Rojo, judicial district of this city, consisting of high and broken lands, and it is known by no name. It contains seven hectares, eighty-six ares, and eight centares. It is bounded on the north by a vicinal road, which leading from the barrio of "Guanajibo," crosses with another road called "Quintana," and connects with the highway from Cabo Rojo to this city; on the south by lands of Luis Barbosa, Tomas Binet, lands formerly of Federico Puig, but to-day of Tomas Binet and Isidro F. Sanjurjo; on the east formerly by Luis Silva, to-day by Tomas Binet, and on the west by lands formerly of Tomas Binetti, to-day of the contracting party Isidro Sanjurjo.

Sixth. A portion or tract of high and low pasture land equivalent to fifteen hectares, twelve ares, and seventy-nine centares, thirty-eight and a half cuerdas according to the measure used in this country, situated in the barrio Guanajibo, of the municipal district of Cabo Rojo, judicial district of this city, which boundaries are shown in the title by which Pedro Siberon y 82 Corporan acquired them which is the deed of sale which was executed to him by Prudencia Velez, on the 21st day of January of one thousand eight hundred and fifty-seven before the former notary of this city, Luis Capo.

Seventh. A portion or tract of high land of eleven cuerdas that is four hectares, thirty-two ares, thirty-three centares, metric system, situated in the barrio and district named. The metes and bounds of the same are also shown in the title by which Siberon acquired them, which is the public deed of sale which Maria Ramona Acevedo executed to them on the eleventh of September of one thousand eight hundred and fifty-seven before the then notary of Cabo Rojo, Pedro M. Martinez.

Eighth. A tract or portion of six cuerdas of low land, equivalent to two hectares, thirty-five ares, eighty-two centares, in the barrio and district stated, and metes and bounds of which are shown in detail in the title by which the said Siberon acquired them which is the public deed of the 24th of March of one thousand eight hundred and sixty-two which Jose Ambrosio and Jose Sotero Irizarri executed

in his favor before the then notary of the village of San German, José D. Quiñones y Ramos.

Ninth. A portion or tract of low pasture land of four cuerdas, equivalent to one hectare, fifty-seven ares and twenty-one centares, situated in the said barrio of "Guanajibo" of Cabo Rojo before cited. The metes and bounds are the same as in the title of Siberon which is the public deed of sale which Federico Creitoff, attorney-in-fact of Francisco Silva, executed to him on the 30th of July, 83 1859, before the then notary of Cabo Rojo, said Pedro M. Martinez.

Tenth. A portion or tract of level pasture land of two and a half cuerdas, equivalent to ninety-seven ares, seventy-five centares, situated in the barrio and district already stated, the metes and bounds of which are shown in the deed of sale executed in favor of the said Siberon by Jose Ambrosio Irizarri, on the 20th of June, 1860, before the before-mentioned notary of Cabo Rojo, Pedro M. Martinez.

Eleventh. A tract or portion of valley pasture land of one and a half cuerdas, equivalent approximately to fifty-eight ares, forty-five centares, situated in the barrio of "Guanajibo" of the municipal district of Cabo Rojo. Its metes and bounds are also shown in the public deed in favor of the said Siberon by Manuel Irizarri on the 5th day of March of one thousand eight hundred and fifty-nine before the said notary of Cabo Rojo, Pedro M. Martinez.

Twelfth. A tract or pasture land of one and three-quarters cuerdas, approximately sixty-eight ares, fifty-three centares situated in the barrio and district already stated, the metes and bounds of which are shown in the public deed executed in his favor by Ramon Lopez Rey, on the 23rd of July of one thousand eight hundred and sixty-six, before the notary of Cabo Rojo, Pedro M. Martinez.

Thirteenth. A tract or portion of three cuerdas of high land, equivalent, approximately, to one hectare, forty-four ares, eleven centares, situated in the said barrio of "Guanajibo," municipal district of Cabo Rojo, the boundaries of which are also set forth in the public deed executed in favor of Siberon by Maria de la Cruz

84 Acevedo, dated the eleventh of September, 1857, and certified to by the then notary of Cabo Rojo, Pedro M. Martinez.

Fourteenth. A tract of even and broken land of five and a half cuerdas (two hectares, fifteen ares and sixty-six centares), divided in its turn in two parts; the first part of three cuerdas (one hectare, seventeen ares, ninety centares), which is situated in the barrio of "Guanajibo" hereinbefore mentioned, and the second part of two and a half cuerdas (ninety-eight ares, twenty-six centares), used, as the other, as pasture land, situated in the said "Guanajibo" of Cabo Rojo, and the boundaries of both of which are set forth in the possessory proceedings which because of want of another title Pedro Siberon commenced in the municipal court of Cabo Rojo and which was approved, after the legal proceedings, by an order of the 19th of November of 1892.

Titles.

Second. That he acquired the plantation described in the first subdivision of the first statement of fact from Pedro Rosello e Irizarri, by deed of purchase and sale executed before the notary by whom this is certified on the 25th of October, 1900, which original deed I have before me; those described in the second and third subdivisions by purchase from Santiago Saenz by deed executed before the notary Mariano Riera, the first copy of which he shows me, recorded at folios 115 and 118, over, of volume five of Cabo Rojo, property numbers 263 and 264, fourth inscriptions; that described in fourth subdivision by deed of the sixth of October, 1892, in which Plaja & Bravo in Liquidation sold it to him, which title was recorded at folio

85 33 of volume 7 of Cabo Rojo, property No. 359, first inscription; that described in the fifth subdivision by a purchase and sale title from Jose Antonio Flextas, by deed executed before the notary of this city, Mariano Riera Palmer, on the 25th of August of 1899, the first copy of which he shows me, and which is pending of record; and those described in the sixth and following subdivisions to the fourteenth, inclusive, by purchase from Pedro Siberon, by deed executed before the then notary of this city, Rosendo Matienzo, on the 3rd of December, one thousand eight hundred and ninety-two, of which he shows me the first copy, pending inscription.

Encumbrances.

Third. The property described in the first subdivision is charged with the payment of several mortgage debts which total sixteen thousand pesos, provincial money, and the remaining ones are free from encumbrances.

Combining.

Fourth. It is the will of the declarant that the property described from the second to the fourteenth subdivision of the first statement of facts be recorded in the registry of property as a single property which is set apart for the raising of cattle. It is situated in the barrio of "Guanajibo" of the municipal district of Cabo Rojo and judicial district of this city, and has an area of fifty hectares, six ares, forty-eight centares, and is bounded on the north by the river "Guanajibo;" on the south by the properties of Tomas and Jose Binetti; on the east by the property of the said Binetti and on the west by the plantation "Cornelia" and property of Ramon Binetti.

Mortgage Credit.

86 Fifth. That by a deed executed before the then notary of this city, Rosendo Matienzo Cintron, on the 9th of October, 1893, Julio Pablo Castro, of age, married, property owner and a resident of Cabo Rojo, confessed that he owed eighteen thousand pesos to Mateo Fajardo y Cardona, of age, married, attorney, and a resident of this city, and he obligated himself to pay him in the following manner: Seven thousand pesos in the month of March of one thousand eight hundred and ninety-five; three thousand pesos

in March of the years 1896, 1897 and 1898; and the remaining two thousand pesos in March of the year 1899, and as security for the said obligation he constituted mortgages in his favor on the following properties:

1st. The rural property, or a sugar cane plantation, called "San Carlos," situated in the barrio of "Bajura" of the municipal district of the town of Cabo Rojo, judicial district of the city of San German which has in a large masonry house roofed with tile, the steam engine, for making sugar, with its boilers, furnaces, coolers, two evaporators, a purger and the other utensils and materials necessary. The area of this plantation at present is only 22 hectares, 48 ares and 18 centares (57 cuerdas and 20/100 more or less) divided into three parts, as follows: One of 9 hectares, 90 ares and 45 centares (25.20 cuerdas) which contains the aforesaid structures and is bounded on the north by the vicinal road which leads to the highway of San German, on the east with lands of Antonio Ramirez, formerly of Manuel Ramirez, on the south with the other lands of Federico Davilla and of Abraham Rodriguez, and on the west by lands
87 formerly of Nicolas Ronda, now of his estate; another tract of five hectares, ten ares, 96 centares (13 cuerdas more or less) which is bounded on the north by the road which leads to Monte Grande, on the east and south by lands formerly of Abraham Rodriguez and to-day of Rocamora Hermanos, on the west by lands of Federico Davila and the lands of Rocamora Hermanos, which were formerly of Abraham Rodriguez; and another portion of land of seven hectares, 46 ares 78 centares (19 cuerdas more or less) which is bounded on the north by the vicinal road which from the low land leads to San German, on the east by lands which formerly formed part of the same plantation, and which to-day are the property of Maria Marti y Serra, on the south by the lands of Federico Davila divided by the river Viego, and on the west by the road which leads to Monte Grande and by the lands of Federico Davila.

2nd. A tract of pasture lands, containing some cane rattoons, of 100 cuerdas (39 hectares, 30 ares and 38 centares). It is situated in the barrio of "Banjura," in the municipal district of Cabo Rojo bounded on the east by the rural roadway called "Los Mangoes," lands of Ana Mercado, the estate of Manuel Irizarri, Federico Davila, and Abraham Rodriguez; and on the south by the lands of the said Abraham Rodriguez and Federico Davila; on the west by the plantation "Carmen" of the successors of Rafael Bello and of Antonio San Miguel y Aravitarde de Gelpi; and on the north by lands of the said Julio P. Castro.

Besides the sum of eighteen thousand dollars the mortgaged properties were held charged in an additional sum of three thousand dollars for costs.

And the charges on the different mortgaged properties were divided in the following form:

88 The plantation "San Carlos" was mortgaged for twelve thousand pesos as principal and two thousand additional for costs, and the other for six thousand pesos as the principal, and one thousand additional; both properties being valued at thirty thousand pesos.

Assignment of Credit.

Sixth. By deed executed before the notary of this city Mariano Riera Palmer, under the number of six hundred and eighty, on the 30th of March, 1905, Mateo Majardo y Cardona, of age, married, property owner and resident of this city, assigned to the declarant, Fernandez Sanjurjo, of the mortgage credit spoken of in the statement of fact preceding this one five thousand pesos, the balance of the instalment of seven thousand which became due in March one thousand eight hundred and ninety-five, which assignment was recorded at folios 43 and 167 of vols. 8 and 7, respectively, of Cabo Rojo, properties numbers 418 and 392 descriptions 7th and 5th.

Another Credit.

Seventh. By deed executed under the number 984 before the notary of this city Mariano Riera Palmer on the 28th of December of one thousand eight hundred and ninety-three, Felicita Rivara y Rivara, of age, widow, a property owner and resident of this city and Jaime Busquets y Solar, of age, married, a property owner and resident of this city confessed being indebted to him in the sum of twelve thousand pesos which they obligated themselves to pay him on the 31st of December, 1903, obligating themselves to pay him in annual instalments due the interest of 12% per annum agreed upon. And the said debtors as the sole members of

89 the commercial firm which did business in this place under the firm name of Widow of Pelegrin Soler and Company, constituted a mortgage as security for the fulfillment of the said obligation on the following property: A coffee plantation called "Casey," situated in the barrios of "Anones," "Casey-Arriba" and "Leguisamo," respectively of the municipalities of Las Marias, Añasco and of this city, and which is composed of 179 cuerdas and 39/100 of another, equivalent to 70 hectares, 22 ares, 47 centares. It has a frame dwelling house roofed with galvanized iron, a coffee peeling mill, a small boiler house, and is bounded on the north by lands of the estate of Ursula Tolosa de Boothby; on the south by the river "Casey" and lands of Severiano Rivera; on the east by lands of Jose and Luis Ortiz; and on the west by other lands of the estate of Jose Joaquin Cuebas. It is made up of three parts; one situated in the barrio of "Anones," of the municipality of Las Marias and judicial district of this city, of 54 hectares, 69 ares and 98 centares, which are bounded on the north by lands of the estate of Ursula Tolosa de Boothby, on the east by others of Jose and Luis Ortiz, on the south by lands of Severiano Rivera and the part which is situated in this city, and on the west by lands of the estate of Jose Joaquin Cuebas; another of two hectares, 75 ares and 12 centares, it being situated in the barrio of "Casey-Arriba" of the municipality of Añasco, judicial district of this city, and is bounded on the east by lands of the estate of Fernando Martell, on the north by the river "Casey," on the west by the lands of the estate of Juan Esteban Cuebas, and on the south by lands formerly of Jose Maria Ortiz de la Renta y Velez, to-day lands of the same property and the other

is of 32 cuerdas and 50/100 of another cuerda, equivalent to
 90 12 hectares, 77 ares, 37 centares of land, situated in the barrio
 of "Leguisamo" of the municipal and judicial district of this
 city and is bounded on the north by the river "Casey" division of
 lands of the same property, on the south by the property of Antonio
 Velez, on the east by the property of Jose Ortiz, and on the west by
 the coffee plantation of Severiano Rivera.

In addition to the twelve thousand pesos and interest for which
 the mortgage was constituted on the described property, it was also
 mortgaged for payment of an additional credit of three thousand
 pesos to pay for costs in case of judicial proceedings.

And the mortgaged property was appraised at thirty thousand
 provincial pesos in case of execution, and all new appraisals and ac-
 tions for that purpose are waived.

The mortgaged property being formed of three parts and the said
 parts being recorded as separate properties, the obligation of each
 was distributed among said parts in the following manner:

That described in the first subdivision was charged to pay ten
 thousand pesos of the principal debt and stipulated interest, and with
 an additional charge of two thousand four hundred pesos for costs,
 and was appraised at twenty-two thousand pesos; that described in
 the second subdivision was mortgaged for five hundred of the prin-
 cipal and interest and two hundred additional for costs, and was
 appraised at 2000 pesos; and that described in the third subdivision
 was mortgaged to secure the payment of 1500 pesos of the principal
 debt and interest, and 400 additional as costs and it was appraised
 at 6000 pesos.

91 The mortgage constituted on the part described in the
 first subdivision was recorded at folio 116, over, of volume
 10 of Las Marias, property No. 243, duplicate, 4th inscription.

That constituted on the part described on the second subdivision
 was recorded at folio 84, volume 10 of Añasco, property No. 124,
 triplicate, sixth inscription. And that constituted on the part de-
 scribed in the third subdivision was recorded at folio 130, over, of
 volume 26 of this city, property No. 522, triplicate, 8th inscription.

Statement.

Eighth. The credit stated in the fifth statement of fact and two
 thousand pesos, provincial money, of that mentioned in the seventh
 he has not collected, assigned, nor made responsible for any debt.

Sale and Assignment.

Ninth. That in fulfillment of their agreement he sells to the other
 party appearing before me the plantation described, and he assigns
 to him all the credit described in the fifth statement of fact and
 2,000 pesos of that mentioned in the seventh, with the following

Conditions.

First. Isidro Fernandez Sanjurjo y Skerret, sells to Federico
 Philippi Kestner, the property described in the first and fourth

statements of fact, and he assigns to him the credit mentioned in the fifth statement of fact, and 2,000 pesos of that mentioned in the seventh for the price of \$25,300, fourteen thousand four hundred dollars of it corresponding to the plantation "Carmen," and 92 seven thousand to the group in the fourth statement, \$2,800 to the credit mentioned in the fifth subdivision, and \$1,100 to that mentioned in the seventh.

Second. The payment of the price shall be made by Philippi constituting or assigning to Sanjurjo within a month, a mortgage credit for three thousand dollars on a property which shall be worth at least six thousand in the judgment of the latter, it being a precise condition that the said mortgage shall produce twelve per cent annual interest; and the payment of \$22,300 remaining he shall obligate himself to make with interest at 12% per annum in the following manner: \$1,100 on the 15th of September of 1901; \$2,800 on the 31st of December of 1901; \$6,200 on the 31st of December of 1902; \$6,200 on the 31st of December of 1903; \$6,000 on the 31st of December of 1904.

Third. For each of the said instalments Philippi has executed a note in favor of Sanjurjo, and as security for the said notes constitute a mortgage on the real property and the real rights which he acquires.

Fourth. As security for the promissory note of \$1,100 he constitutes a mortgage on a mortgage credit of \$2,000, provincial money, of the mortgage mentioned in the seventh statement of fact for \$1,200, that is, \$1,100 of the debt and \$100 for costs and expenses of the execution, the charge against the mortgage being appraised at \$1,200.

Fifth. For the payment of the two notes of \$6,200 already mentioned, he constitutes in his favor a mortgage on the plantation "Carmen" described in the first subdivision of the first statement of fact for \$14,000, that is, \$12,400 of the debt, and \$1,600 additional for costs, the mortgaged property being appraised at \$24,000.

93 Sixth. As security for the promissory note of \$6,000 he constitutes in his favor a mortgage for \$7,000 on the property described in the fourth statement of fact, \$6,000 corresponding to the promissory note guaranteed and \$1,000 to the additional credit for costs, the property being appraised at \$8,000.

Seventh. For the promissory note of \$2,800 he constitutes a mortgage in his favor for \$3,000 on the credit mentioned in the fifth statement of fact; two thousand eight hundred as the principal credit and two hundred additional for costs, the value of the mortgage being appraised at \$3,500.

Eighth. The appraisals made are to provide for the execution, and the contracting parties waive all new appraisals and actions for that purpose.

Ninth. Philippi shall enter into possession of the properties which are sold to him and shall be subrogated to the place and right of the assignor as respects the credits assigned, from the execution of this deed.

Tenth. For the purpose of prosecuting any actions which may develop from this contract both parties agree to submit themselves to the courts of this city.

Eleventh. Philippi shall pay punctually at the end of each month the interest agreed upon of the instalments which shall become due on the 31st of December, of the years 1901, 1902, 1903, and 1904, and Sanjurjo obligates himself to extend all sums to which said instalments may amount to for four years more, but the debtor shall lose all right to the extension so soon as he fails to pay the interest for three months.

Twelfth. Federico Philippi y Kester accepts the sales and assignments and Isidro Fernandez Sanjurjo accepts the mortgage which in payment of the notes in his favor for the payment of the price have been constituted in his favor.

94

Advice.

And I, the notary, advised the contracting parties that in favor of the Island and the municipality respectively, there was reserved a preferred legal mortgage on the properties sold to pay for the last annual unpaid tax.

That a copy of this deed was to be taken to the registrar of property for record, because without this the rights of third parties would not be prejudiced, nor would it be received in the offices of the government, courts or tribunals when the object of the presentation would be to prejudice third parties by a right which should have been recorded.

And that the mortgage constituted on the mortgage right shall remain pending the decision of the mortgage right which has been mortgaged.

Thus they execute and sign before the witnesses Rodolfo Ramirez and Andres Orsini, residents of this city, after the reading which I made to them of this instrument, informing them of the right which they had to read it for themselves and which right they renounced, to all of which I certify. Isidro F. Sanjurjo. F. Philippi. Rodolfo Ramirez. Dr. Andres Orsini. Signed, Alfredo Arnaldo.

The contents of this correspond well and faithfully with the original deed which under No. 151 is in the protocol of public instruments of the notarial office which formerly belonged to Alfredo Arnaldo corresponding to the year 1901. I certify to this and as the general archive keeper of this district I issue this copy at the request of the Honorable Attorney General which I signet, sign and rubricate on twenty-two sheets of paper at Mayaguez on the 31st of October of 1910.

MARIANO RIERA PALMER.

95 [SEAL.]

MARIANO RIERA PALMER.
Lawyer and Notary, Mayaguez, P. R.

Excise Tax Stamp, 50 cts., cancelled.

Dr. Joaquin Servera Silva, registrar of property of this city and of its mortgage district. I certify: That the foregoing deed was recorded on the 15th of May of 1901 from another copy of the same with respect to the property belonging to this registry, at the folios and in the volumes following, as concerns the sale and mortgage of the plantation "Carmen" at folio 17, over, of volume 45 of this city, property No. 2350, second inscription. And as regards the assignment of the mortgage credit constituted on the plantation "Casey" and the sub-mortgage on the same from another deed, dated the 15th of May of 1901, executed in this city before the Notary Alfredo Arnaldo y Sevilla, at folios 145, 106, and 144, over, of volume- 14, 12 and 45, of the municipalities of Las Marias, Añasco and Mayaguez, respectively; property numbers 242, 124, and 522, inscriptions 14, 16 and 18; and at the request of the Honorable Attorney General, in matters concerning the People of Porto Rico, I issue these presents free of all fees, at Mayaguez, on the second of November, one thousand nine hundred and ten.

[REGISTRAR'S SEAL.]

DR. JOAQUIN SEVERA SILVA.

96 Thereupon further to maintain the issues on his behalf, counsel for defendant offered in evidence a deed from Federico Philippi to Rosa, Dolores and Elisa Garcia Sanjurjo, dated November 11, 1901, to the admission of which in evidence counsel for plaintiff objected on the same ground as to the deed last offered which objection was overruled, and to the ruling of the Court counsel for the plaintiff excepted.

The document so offered and admitted in evidence was in the Spanish language, and a true translation thereof into the English language is in words and figures following to-wit:

97

Mariano Riera Palmer,

Attorney-Notary.

Transcript.

Mayaguez, P. R.

Corrected.

Number three hundred and three. In the City of Mayaguez on the eleventh day of November, nineteen hundred and one. Before me Alfredo Arnaldo y Sevilla, Attorney and Notary of the Notarial Association of Porto Rico, residing in this city There appear Federico Philippi Kestner, of legal age, a widower, property owner and resident of this city. And Rosa, Dolores and Elisa Garcia Sanjurjo, of legal age, unmarried, engaged in domestic occupations and residents of this city. I certify to a knowledge of the profession and resident of the parties hereto and they have in my judgment full capacity for the purpose of executing this deed of sale, and Mr. Philippi states:

First. That he is the owner of the following rural estate consisting of a tract of land composed of high and low lands, within area of two hundred and thirty-nine cuerdas and four hundred and eighty-six thousandths of a cuerda, equivalent to ninety-four hectares, two acres and seventy-three centiares situated in barrio

Miradero of this municipality and known as "Hacienda Carmen," upon which land there is situated a frame dwelling house 98 roofed with galvanized iron, a building constructed of stone and masonry which was used as a boiler house and sugar refinery; sheds for the manufacture of bricks, and other buildings situated on said tract of land, and that he was the owner moreover of the irrigation rights belonging to the old hacienda "Carmen," except that part belonging to the Agricultural Station. This whole tract of land is bounded on the north by the Oro brook, by lands of Don Francisco Ramos, by those of the widow of Rocafort and by the same brook, by lands of the estate of Elias Lacourt and by those of Olivieri Brothers; on the east by a vecinal road, lands of Adolfo Gomez, Juan Luciano, another vecinal road, Genaro Cartagena, Manuel Bengoa, and Pedro Agostini; on the west by the segregated lands which formerly formed part of the present property, by the Oro brook, lands of Antonio Lopez, Juan Roland, Francisco Borrero, Ramon Ruiz, the vecinal road of Añasco, Luis Cartagena and the highway leading to Añasco; and on the south by the Taguez river, a lot belonging to Mercedes Segarra de Soto, Isidro Sanjurjo, a lot belonging to Alfredo Arnaldo, a projected street upon lands of the hacienda Carmen, lands of the Agricultural Station and others of the Agostini Brothers.

Title.

Second. That he acquired the estate hereinbefore described by purchase from Isidro Fernandez Sanjurjo, by deed executed before the notary who certifies hereto on April twenty-six of this year, which title was recorded at folio seventeen reverse, volume, forty-five, Mayaguez, estate two thousand three hundred and fifty. Second entry.

Encumbrances.

Third. That the estate above described is encumbered among other mortgages which appear in the registry, by a mortgage for 99 twelve thousand four hundred dollars constituted by a deed, executed before the notary who certifies hereto, on the twenty-six day of April of the present year, to secure two notes for six thousand dollars each which mature on the thirty-first of December, nineteen hundred and three, executed by the party executing this instrument to the order of Isidro Fernandez Sanjurjo, which notes have been endorsed to the Misses Garcia Sanjurjo who appear herein.

Agreement.

Fourth. That having agreed to sell the property herein described to the said young ladies, he consummates the said sale under the following

Conditions.

First. Federico Phillipi y Kesner sells to Miss Rosa, Miss Dolores, and Miss Elisa Garcia Sanjurjo the property described in the first

statement of this deed, for the price of thirteen thousand nine hundred dollars: twelve thousand four hundred of which is the amount of the notes secured by mortgage and signed to the order of Isidro Fernandez Sanjurjo and one thousand five hundred of which he acknowledges to have received from purchasers; five hundred dollars from each.

Second. Miss Rosa, Miss Dolores and Miss Elisa Sanjurjo cancel the mortgage constituted upon the estate which they acquire and which is mentioned in the third statement hereof, by virtue of fact that the rights of both creditor and debtor have been merged in them and they therefore destroy in my presence the two notes of six thousand dollars each to secure the payment of which the mortgage was constituted, and they consent to the cancellation of the same in the registry of property.

100 Third. The purchasers will enter upon the possession of the property which is hereby sold to them immediately after the execution of this deed.

Fourth. The parties hereto expressly submit to the jurisdiction of the tribunals of this city for the exercise of any of the actions which may arise in compliance with this contract.

Fifth. Miss Rosa, Miss Dolores, and Miss Elisa Garcia Sanjurjo accept this deed in all its parts. And I the notary advise them: Of the existence in favor of the State, the Island and the Municipality of a preferential legal mortgage for the collection of all taxes due and unpaid for the year last past.

The receipt of the one thousand five hundred dollars having been acknowledged the property is sold free from all encumbrances, although it may be subsequently shown that this was not true in all or in part.

That they should present a copy of this deed at the registry of property for admission to record, as without such requisite it will not prejudice a third party nor will it be admissible in the offices of the government, courts or tribunals, except in the cases mentioned in the Mortgage Law.

Thus they execute and sign this deed before the witnesses Jose Maria Seda and Pedro R. Gonce, residents of this city, after having read the same to them and they having been advised by me of the right which they had to do so for themselves, they having waived their right to read it for themselves, to all of which I certify. At this point the contracting parties state that the vendor is not bound to warrant the title of the property sold. And I certify.—

101 F. Philippi.—Rosa Garcia Sanjurjo.—Dolores Garcia Sanjurjo.—Elisa Garcia Sanjurjo.—J. M. Seda.—Pedro R. Gonce.—Seal.—Alfredo Arnaldo.

This is a true and exact copy of the original deed and the contents thereof on file in the archives of public instruments of the notary formerly of this city, Alfredo Arnaldo y Sevilla, now in my custody as general keeper of archives for the district. In testimony of which and at the request of the Honorable Attorney General I issue this copy, which I sign and seal and to which I affix my rubric on six sheets of paper written on the typewriter, in Mayaguez on the

twelfth day of July, nineteen hundred and ten. Amendments.—
i-I-ñ-T-c-p-C-u-a—Valid.

(Signed)

MARIANO RIERA PALMER.

[Notarial Seal, Internal Revenue Stamp.]

Dr. Joaquin Servera Silva, Registrar of Property of this city and its mortgage district. I certify that this instrument was recorded from a copy of the same, on January 30, 1902, at fol. 20 over of Vol. 45 of this city, property No. 2350, third inscription.

At the request of the Honorable Attorney General, in matters concerning the People of Porto Rico, I issue these presents, without fee charges, at Mayaguez on October 28, 1910.

[SEAL.]

DR. JOAQUIN SERVERA SILVA.

102 Thereupon further to maintain the issues on his behalf counsel for defendant offered in evidence a deed from Rosa, Dolores and Elisa Garcia Sanjurjo to Ysidro Fernandez Sanjurjo, dated April 19, 1902, to the admission of which in evidence counsel for plaintiff objected on the same ground as to the deed last offered, which objection was overruled, and to the ruling of the Court counsel for the plaintiff accepted.

The document so offered and admitted in evidence was in the Spanish Language, and a true translation thereof into the English language is in words and figures following, to-wit:

103 Mariano Riera Palmer,
Attorney-Notary,
Mayaguez, P. R.

Transcript.

Corrected.

Number One Hundred and Eight.

In the city of Mayaguez on the tenth day of April, one thousand nine hundred and two, before me Alfredo Arnaldo y Sevilla, Attorney and notary of the association of notaries of Porto Rico, residing in the aforesaid city, appear Miss Elisa, Miss Dolores, and Miss Rosa Garcia Sanjurjo, parties of the first part, of legal age, unmarried, property owners and residents of this city; and Mr. Isidro Fernandez Sanjurjo y Skerret, party of the second part, of legal age, married, property owner and also a resident of this city.

I certify to a knowledge of the profession and residence of the parties hereto, and they having in my judgment the necessary legal capacity for the execution of this deed of segregation and sale, the Misses Garcia Sanjurjo state:

First, that they are the owners of the following estate: Hacienda "Carmen," consisting of two hundred and thirty-nine and four hundred and eighty-six-one-thousandths cuerdas, equivalent to ninety-four hectares, thirty-two ares and ninety-three centares, planted to pasture, plantains and coffee, and situated in the barrio Miradero within the municipal and judicial jurisdiction of this city, there being situated thereon a frame house with a galvanized iron roof, a building constructed of stone and masonry,

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which was formerly used as a boiler house and sugar refinery, a stable to accomodate forty horses, three houses for laborers, carriage house, sheds for the manufacture of bricks, and the other buildings situated thereon, and one-half of the irrigation right pertaining to the old Hacienda "Carmen" except the part belonging to the Agricultural station; and it is bounded on the north by the Oro brook and the lands belonging to Don Francisco Ramos, widow of Rocafort and the estate of Don Elias Racourt, and the Olivieri brothers; on the east by the vecinal road, lands of Don Adolfo Gomez, Don Juan Luciano, another vecinal road, lands of Don Genaro Cartagena, Don Manuel Bengoa and Don Pedro Agostini; on the west by lands of the old Hacienda "Carmen," the Oro brook and lands of Don Antonio Lopez, Don Juan Roland, Don Francisco Borrero, Don Ramon Ruiz, and the vecinal road to Añasco, lands of Don Luis Cartagena, and the public highway to Añasco; and on the south by the Yagaez river, lands of Doña Mercedes Segarra de Soto, Don Isidro F. Sanjurjo and Don Alfredo Arnaldo, a projected street, the Agricultural Station, and the property of the Agostini brothers.

Title.

Second. That they acquired the property hereinbefore described by purchase of the same from Don Federico Philippi y Kestner by deed executed before the notary who certifies hereto on the eleventh of November, one thousand nine hundred and one.

Incumbrances.

Third. That upon the property hereinbefore described 105 there is a mortgage for five thousand six hundred dollars constituted in favor of Tomas Quiñones, by a deed executed by the notary who certifies hereto, on the twenty-fifth of February of the present year.

Segregation.

Fourth. That from the property described in the first statement hereto they segregate a tract consisting of two hundred and twenty-four and twenty-five one hundredths cuerdas, equivalent to eighty-six hectares, two ares, twenty centares, upon which property the buildings, houses, sheds and stables described hereinbefore are situated, as well as the irrigation right, and the tract so segregated shall continue to be called Hacienda "Carmen," and is bounded on the north by the Oro brook and the properties of Don Francisco Ramos, those of the widow of Rocafort, the estate of Lacourt, and the lands of the Olivieri brothers; on the east by a vecinal road, lands of Don Adolfo Gomez, Juan Luciano, another vecinal road and lands belonging to Genaro Cartagena, Don Manuel Bengoa and Don Pedro Agostini; on the west by lands of the old Hacienda "Carmen," the Oro brook, lands of Don Antonio Lopez, Don Juan Roland, Don Francisco Borrero and Don Ramon Ruiz, the vecinal road to Añasco, lands belonging to Luis Cartagena and the public highway to

Añasco; and on the south by the Yaguez river and the lands pertaining to the property from which the segregation is made.

The parties executing this deed give their consent to have the segregation made to appear in the Registry of Property, and value the parcel so segregated at twenty-one thousand dollars; and

106 Fifth. Having agreed to sell to the other party appearing herein the lands segregated and described in the foregoing paragraph the agreement *in* hereby carried out under the following:

Conditions.

First. Doña Dolores, Doña Elisa and Doña Rosa Garcia Sanjurjo sell to Don Isidro Fernandez Sanjurjo y Skerret, two hundred and twenty-four and twenty-five one-hundredths cuerdas segregated from the Hacienda "Carmen" and described under paragraph numbered Four in this deed, for the price of one thousand dollars, which they acknowledge to have received from the purchaser prior to the execution of this instrument, and for which amount they give a most solemn and binding receipt hereby.

Second. The purchaser will enter upon the possession of the property herein sold without any requirement other than the execution of this deed.

Third. For the exercise of any of the actions which may grow out of a compliance with this contract the contracting parties expressly submit to the tribunals of this city; and

Fourth. Don Isidro Fernandez Sanjurjo y Skerret accepts this deed in all its parts;

And I advise them:

That the receipt of the price of this sale having been acknowledged the real estate is sold free from all incumbrances, although it may be subsequently shown that the delivery of the purchase price either in whole or in part has not been made.

That there is reserved in favor of the Island and municipality a preferential legal lien upon the property sold, to secure the
107 payment of taxes remaining due and unpaid for the year last past; and

That they shall present a copy of this deed at the Registry of Property for the admission thereof to record in as much as without said requisites it will not prejudice a third party now will it be admissible in the offices of the government, the courts or tribunals.

Thus they execute and sign before the witnesses Don Jose Maria Seda and Don Abraham Peña, residents of this city, after I had read this deed to them all, and having advised them of their right to read it for themselves, which right they waived; to all of which I certify:—Elisa Garcia Sanjurjo.—Dolores Garcia Sanjurjo.—Rosa Garcia Sanjurjo.—Isidro Sanjurjo.—J. M. Seda.—Abraham Peña.—Signed and Sealed. Alfredo Arnaldo.

This is a true and exact transcript of the original deed on file under number one hundred and eight in the archives of public instruments of the notarial office of Alfredo Arnaldo for the year nine-

teen hundred and seven, now in my custody as general keeper of the archives of this district.

In testimony whereof, and at the request of the Honorable Attorney General, I issue this copy on six sheets of paper which I sign and seal and to which I affix my rubric in Mayaguez on the twelfth day of July, one thousand nine hundred and ten. Amendments, g-milesimas-2.—Sobre raspado.—seiscientos.—Entre lineas.—de Ladrillos.—Todo Vale.

(Signed)

MARIANO RIERA PALMER.

A 50-cent Excise Tax Stamp is affixed.

[SEAL.]

Dr. Joaquin Servera Silva, Registrar of Property of this city and mortgage district. I certify that the foregoing instrument, 108 from a copy thereof, was recorded on May 31, 1902, at fol. 24 of Vol. 49 of this city, property No. 2505, first inscription.

At the request of the Honorable Attorney General in matters concerning the People of Porto Rico, I issue these presents, without fee charges, at Mayaguez on October 28, 1910.

[SEAL.]

DR. JOAQUIN SERVERA SILVA.

Thereupon further to maintain the issues on his part counsel for the defendant introduced in evidence the deed from said Ysidro Fernandez Sanjurjo to Elisa Garcia Sanjurjo, dated June 2, 1902, which is the same deed already introduced in evidence on behalf of the plaintiff, the English translation of which hereinbefore appears as a part of this bill of exceptions.

And thereupon further to maintain the issues on his part counsel for defendant introduced in evidence a deed from said Elisa Garcia Sanjurjo to the People of Porto Rico, which was in the Spanish language and a true translation whereof into the English language is in words and figures following, towit:

Number One Hundred and Seventy-five.

In the city of Mayaguez, August twenty-nine, one thousand nine hundred and two, before me, Licentiate Alfredo Arnaldo y Sevilla, Notary, residing in this city, of the Notarial Association of Porto Rico, appear:

Elisa Garcia Sanjurjo, of legal age, unmarried, property owner, and a resident of this city, party of the first part, and James A. Erwin, of legal age, married, Associate Judge of the District Court of this city, and a resident thereof, party of the second part.

Judge Erwin appears in this act as representative of The People of Porto Rico, by virtue of the authority conferred upon him by the Honorable the Secretary of Porto Rico.

I certify to my knowledge of the parties hereto, and of their profession and residence, and having, in my opinion, the necessary legal capacity for the execution of this deed of purchase, and sale, Miss Garcia Sanjurjo sets forth:

Estate.

First, that she is owner of the estate hereinafter described:

Plantation "Carmen" consisting of two hundred and twenty-four and twenty-five hundredths cuerdas, equal to eighty-seven hectares, two ares and twenty centares, dedicated to pasture, plantains and coffee, situated in "Miradero" ward, within the municipal and judicial Districts of this city, having a frame, zinc-roofed dwelling-house, masonry buildings which were formerly boiler and sugar-curing houses, stables for forty horses, three houses for laborers, coach-houses, sheds for the manufacture of bricks, and other constructions contained therein, as also irrigation right.

Said estate is bounded on the north by the brook called "Quebrada de Oro" and lands belonging to Francisco Ramos, widow, Rocafort, estate of Elías Lacourt, and lands of Olivieri brothers; on the east by a parish road, lands belonging to Adolfo Gomez and Juan Luciano, another parish road, lands of Genaro Cartagena, Manuel Bengoa and Pedro Agostini; on the west by lands formerly belonging to plantation "Carmen" the "Quebrada de Oro" brook, and lands of Antonio López, Juan Rolán, Francisco Borrero, Ramón Ruiz, parish road leading to Añasco, lands belonging to Luis Cartagena and the highway to Añasco; and on the south by river Yaguez and lands belonging to the Misses Garcia Sanjurjo.

That on June sixteen of the present year a survey was made of the estate described in the preceding statement by the Supervisor of Public Lands of the Department of the Interior of this Island, in the presence of the adjoining owners, and from the record and map taken and a translation of the record it appears that the estate is composed of two parts, the description of each being as follows: (Here follows a detailed description by metes, distances, directions and bounds.)

Title.

Second, that she acquired said estate by purchase from Isidro Fernandez Sanjurjo, according to deed executed before Notary Juan Quintero y Gonzalez of this city, on June 2 of this year, which title was recorded on folio 26, volume 49 of this city, estate No. 2505, entry 2.

Incumbrances.

Third, that said estate is encumbered by a mortgage for \$5,600, in favor of Tomás Quiñones y Guzman, maturing on February 25, 1903, and an attachment for \$900, in favor of Agustín Reig.

Promise of Sale.

Fourth, that by deed of May 3 of the present year, before me, Isidro Fernandez Sanjurjo engaged to sell the hereinabove described property to the Municipal Council of this City for the sum of \$19,000., of which he was to receive \$15,000 cash, and the remaining \$4,000, as follows: \$2,000 from the budget for 1902-1903 and

\$2,000 from the budget for 1903-1904, without any liability on the part of the estate; and the party of the first part, upon acquiring said estate from Sanjurjo, engaged to fulfill in all its parts the promise of sale contracted by him.

Sale to the People of Porto Rico.

Fifth, that she has been instructed by the Municipal Council of this City to sell the hereinbefore described estate to The People of Porto Rico for the sum of \$15,000, said Municipal Corporation engaging to pay the remaining \$4,000 in the manner agreed upon in the deed mentioned in the preceding statement; with the proviso that neither The People of Porto Rico nor that estate in question shall be affected by any obligation whatsoever for the \$4,000 that the Municipal Corporation of this City engages to pay; the sale being effected under the following

Conditions.

First, Elisa Garcia Sanjurjo sells to The People of Porto Rico the estate described in the first statement hereof for the sum of Fifteen

110 Thousand Dollars, of which she acknowledges having received one thousand five hundred dollars, leaving six thousand five hundred in the hands of the vendee to meet the incumbrances existing on said estate; and she hereby solemnly gives acquittance of the stipulated price.

Second, The People of Porto Rico *has* been in possession of the estate sold since May of the current year.

Third, for all proceedings whether judicial or extra-judicial to which the fulfilment of this contract may give rise, this city is designated as domicil; and

Fourth, James A. Erwin accepts in all its parts the present deed, as representative of The People of Porto Rico

Notifications.

1. the Notary, notified the parties hereto:

1. That the receipt of the purchase price having been acknowledged, the estate sold remains free from all liabilities therefor, although it should be proven that such payment was not made, either totally or partially.

2. That in favor of the Insular and local governments is reserved a legal preferential mortgage for the collection of the yearly taxes assessed, on, and not satisfied by, the alienated estate.

3. That a copy of this deed must be taken to the Registry of Property for admission to record, without which requisite it cannot prejudice a third person, nor be admitted at the offices of the Government and Courts of Justice.

Thus do the parties execute and sign the present deed before the witnesses José Antonio Fernandez and Enrique San Millán, residents of this city, after I had read it to them and informed them of their right to read it for themselves, which they waived; to

which I certify.—Elisa Garcia Sanjurjo—J. A. Erwin—Jose A. Fernandez—Enq. San Millán. Signed, Alfredo Arnaldo.

The foregoing is a true and faithful transcript of the original deed which under No. 175 is on file with the protocol of public instruments for the year 1902 of the Notarial Office formerly in charge of Alfredo Arnaldo y Sevilla, now under my custody as General Keeper of the Record for this District. In witness whereof, and at the request of the Honorable the Attorney General, I issue this copy to which I affix my signet, signature and rubric on twenty leaves of paper, in Mayaguez, this thirteenth day of July, one thousand nine hundred and ten.

[L. S.]

(Signed) LICENTATE MARIANO RIERA PALMER.

Dr. Joaquin Servera Silva, Registrar of Property of this city and of its mortgage District. I certify that the foregoing instrument, from a copy of the same and having before me another instrument dated September 20, 1902, executed before the Notary Alfredo Arnaldo y Sevilla, was recorded on September 23, 1902, at fol. 84 of vol. 50 of the municipality, property No. 2505, duplicate, fourth inscription.

At the request of the Hon. Attorney General in matters concerning The People of Porto Rico, I issue these presents without fee charges, at Mayaguez on October 28, 1910.

[SEAL.]

DR. JOAQUIN SERVERA SILVA.

Thereupon further to maintain the issues on his part counsel for defendant introduced in evidence a certified copy of all the entries in the Registry of Property relative to the plantation, 111 the title to which is in controversy, which it is admitted by plaintiff contained an abstract of a record of all the deeds covering said property heretofore introduced in evidence by the defendant, and showed no cautionary notice entered by the Registrar of Property specifying any defect in the title. Said certificate is not copied verbatim into this bill of exceptions, because it contains nothing material to the issues in this cause further than is shown by the other documentary evidence already admitted.

Thereupon, further to maintain the issues on his part, counsel for defendant offered in evidence a certified transcript of the record in the case of Altagracia Nadal y Freyre vs. Isidro Fernandez Sanjurjo in the District Court of the District of Mayaguez, Porto Rico; whereupon the following proceedings between court and counsel took place:

MR. BROWN: Now then, I offer as Exhibit No. 1-A a certified transcript of the entire record in the case of Altagracia Nadal y Freyre against Isidro F. Sanjurjo y Skerret from the District Court at Mayaguez. That is the suit between the husband and the wife.

MR. PETTINGILL: Your Honor can see that that is something, and I would like to ask the indulgence of the Court until after recess time to examine it.

112 (A recess of court is taken until 1:30 p. m.)

The COURT: What is the purpose of this record?

Mr. BROWN: There are two purposes. In the first place, this suit was filed by the wife against the husband for a settlement and an accounting on his part for the paraphernal property, she alleging in her bill that the estate "Carmen," among others, was her property bought by her individual means. Now that bill pended for a time and it was finally dismissed, and at the time of the dismissal, an agreement was made by which she agreed that the husband had accounted to her and paid her all the money that he had received on her account, and she therefore renounced all claims against the husband. I introduce that record, may it please Your Honor, to show that there was a complete settlement between the husband and wife. That is the first purpose. The second object is to enable Your Honor to construe that will. The latter part of the will Says, all rights and actions on properties which are in the name of my husband.

The COURT: Is that signed, General Brown? Is the agreement signed?

Mr. BROWN: The agreement is signed by the spouses; yes, sir.

The COURT: Is it part of the Record?

113 Mr. BROWN: It is not part of the record but it is referred to. This is the agreement on which that suit was dismissed (producing another document). That suit says that it was dismissed on this agreement. Now so that Your Honor may understand, I will have to have that record to show that it refers to the estate Carmen.

The COURT: I will hear Mr. Pettingill. He says that he has an objection.

Mr. PETTINGILL: The objection is based largely upon the fact that while this refers in the petition of counsel to an agreement, it doesn't identify any agreement in itself. The ground of the objection is that it is immaterial and incompetent; immaterial because it only pretends to litigate over the paraphernal property of the wife, as the Attorney General has stated, and we are not dealing in this suit with paraphernal property. Answering what may occur to the Attorney General to argue or what may occur to Your Honor, that the estate Carmen is mentioned here. The fact that the plaintiff in that case may have mistakenly regarded the property Carmen as paraphernal property did not make it so, and we submit as matter of law it was not. The paraphernal property is that which comes directly from the inheritance. When the

114 inherited property has been sold and its proceeds reinvested in other properties, unless the identity of both the properties and the money is preserved, the property does not remain paraphernal but becomes conjugal and remains subject to conjugal rights, and we claim that this property which was originally paraphernal, by investment and reinvestment became conjugal. Therefore this has nothing to do with the suit in question and any release of the paraphernal property would not affect the rights of the wife or the heir. Second, that it is incompetent because it was dismissed

as shown upon its face by virtue of a compromise entered into between the parties. And we submit that *that* the compromise upon the face of this, without coming to any decision or judgment, makes it entirely incompetent to serve as evidence in this case, or as evidence of what the parties may or may not have claimed in that case.

The COURT: Standing alone it might not be, but the Attorney-General says that he is going to follow it up by an agreement signed by both of them.

Mr. BROWN: Yes sir.

The COURT: The objection is overruled.

Mr. PETTINGILL: Note an exception.

115 Whereupon said record was admitted in evidence. The only material parts thereof are the complaint and the stipulation and order of dismissal, which were in the Spanish language, and a true translation whereof into the English language is in words and figures following, viz:

District Court of Mayaguez, P. R.

Office of the Secretary.

To the District Court:

I, Jose de Diego, the attorney representing Altagracia Nadal y Freyre, of age, married, a resident of this city, appear before this court and file a complaint in an ordinary action against Isidro F. Sanjurjo y Skerret, the husband of said lady, alleging the following

Facts.

1. Altagracia Nadal inherited from her parents, Esteban Nadal and Micaela Freyre, an estate amounting to 121,196.97-5/9 pesos, Mexican money, equivalent at present time to \$72,718.18 without mention being made of the fraction.

2. According to the partition and division of the estate of her predecessors in interest, filed in the form of an instrument in the notarial office of Rosendo Matienzo Cintron, the following was awarded to Mrs. Nadal in settlement of her hereditary estate: A ninth interest in the products of the estate of Estebania, inventoried under number 42—765.82-7/9; a ninth interest in the personal property of the estate of Estebania, inventoried under numbers 44, 45, 46 and 47,—\$437.88-8/9; a ninth interest in the lands 116 and factories on the Estebania estate, valued at 128,181.97 pesos, which estate is described and determined in the inventory under number 48,—\$14,242.44-1/9; a ninth interest in one-half of the estate of Cuatro Hermanos having a total value of 30,528.44 pesos, described and determined in the inventory under number 51,—\$1,696.02-4/9; a ninth interest in the ownership of one-quarter of the estate of Constancia having a total value of 54,750.65, described and determined in the inventory under number 50,—\$1,520.85-1/9; a ninth interest in the ownership of the lands of the estate of Carolina, valued at 4,944.80 pesos, described

and determined in the inventory under number 49,—\$549.42-2/9; a third interest in the ownership of the value of the dwelling house on the Carolina estate, described in the inventory under number 49 and valued at 300 pesos,—\$11.11-1/9; a ninth interest in the ownership of a cuerda of land situated in the estate of San Romualdo, referred to in the inventory under number 52, and valued at 100 pesos,—\$11.11-1/9; a masonry house of one floor situated on Mirasol street of this city, number 56, which constitutes the main department of a building of which it forms part, is recorded separately and likewise appraised and inventoried separately under number 62,—\$6,886.18; a ninth interest in the ownership of a masonry house, with wooden frame, having an upper and lower floor, situated on Mendez Vigo street of this city, number 74, described and inventoried under number 58 and valued at 14,569.30,—\$1,618.81-1/9; a ninth interest in the ownership of the Marina warehouse in this city, at number 25 Comercio street, with its lot and appurtenances, which estate has been valued at the sum of 28,856.88 pesos, and is described and determined in the inventory under number 68,—\$3,206.32; a ninth interest in the ownership of a house used for the storage of sugar, situated opposite Comercio street in this city, on a lot which extends to the sea, which estate has been valued at 7,036.66 pesos, and is described and determined in the inventory under number 54,—\$781.85-1/9; their share in the West Indies and Panama Cable Company, Limited, of ten pounds sterling each, quoted at one pound and five pesos, inventoried under number 94,—\$24.37-1/2; two shares of stock of the Mayaguez Theater Company, having a nominal value of 80 pesos each, quoted at 50% and inventoried under number 95,—\$80; seven shares of stock in the Sixth Avenue Company of New York of 100 pesos nominal value each, quoted at 177%, inventoried under number 99,—\$1,239; a ninth interest in the ownership of sixty shares of stock deposited as security in the Banco Español de Puerto Rico, at 100 pesos each of which 25% only has been paid, inventoried under number 97; her share of 1,578.95, of which one-ninth is 175.43-8/9 pesos; a ninth interest in the ownership of the remainder of 187 shares of stock in the Credito Mercantil de Puerto Rico, a joint stock company, of which 26% is still to be collected, inventoried under number 98,—\$540.22-2/9; a half interest in Russian five per cent bonds, amounting to 4,400 pounds sterling, nominal value, quoted at 116-3/4%, inventoried under number 37,—\$12,959.25; bonds of the German Empire, issue of 1880, 3-1/2%, to the amount of 20,000 Prussian marks, quoted at 98-9/10%, inventoried under number 33,—\$4,945; part of the account of the Colonial Limited Company, inventoried under number 75,—1,225 pounds sterling and 6 shillings and 4 pence,—\$6,126.58-6/9; seven per cent bonds of the City of Cincinnati, of the nominal value of 3,000 pesos, quoted at 118%, inventoried with others under number 6,—\$3,270; seven per cent bonds of the City of Cincinnati having a nominal value of 1,000 pesos, quoted at 118%, inventoried with the preceding ones under the same number, \$1,180; bonds of the United New Jersey

Canal Railroad, at 6%, to the nominal amount of 10,000 pesos, quoted at 118%, inventoried under number 23,—\$11,800; five per cent bonds of the City of Pittsburg, having a nominal value of 3,000 pesos, quoted at 117%, inventoried under 5,—\$3,510; four per cent bonds of the Michigan Central Railroad, having a nominal value of 10,000 pesos, quoted at par, inventoried under number 15,—\$10,000; part of the deposit with the United States Trust Company, inventoried under number 80,—\$8,933.90-3/9; a diamond and emerald pin, inventoried under number 40, letter E,—\$200; a diamond set, inventoried under the same number, letter G,—\$310; a ring having one emerald, inventoried under the same number, letter I,—\$25; a pair of gold bracelets, inventoried under the same number, letter L,—\$16; a gold watch chain, inventoried under the same number, letter N,—\$11; a gold pin, under the same number, letter N,—\$16; a pair of gold earrings, under the same number, letter O,—\$2; a pin and a pair of gold earrings, under the same number, letter S,—\$20; a ninth interest in the ownership of the Cross of Military Merit and of the Great Cross of Isabelle the Catholic, inventoried under the same numbers, letters L and AA,—\$76.44-4/9; a ninth interest in the ownership of a silver table and dinner set, inventoried under number 41,—\$189.22-2/9; a number of pieces of furniture in the house of the deceased, inventoried under number 43,—\$648; a ninth interest in the ownership of 34 Porto Rican Treasury bonds, having a nominal value of 100 Spanish pesos each, inventoried under number 2, quoted altogether at 3,579.17—\$397.68-5/9; a ninth interest in the ownership of the account current of Latimer & Co., amounting to 14,366.60 pesos, inventoried under number 89,—\$1,599.62-2/9; a ninth interest in the ownership of two promissory notes of Carlos Monagas Pesante, inventoried under number 91,—\$44.44-4/9; a ninth interest in the ownership of three notes of José R. Castro, amounting to 1,322.50 pesos, inventoried under number 92,—\$146.94-4/9; a ninth interest in the mortgage credit against Emilio and Ernesto Patxot, amounting to 10,030.31 pesos, inventoried under number 90,—\$1,114.47-8/9; the amount of the advance of her legal portion and shares brought herein to be deducted from her portion referred to in the seventh statement,—\$10,187.57; a ninth interest in the ownership of the separate account of the Banco Español de Puerto Rico, inventoried under number 87,—\$218.16-6/9; part of the cash inventoried under number 1,—\$2,587.47; part of the account current of Moral, Gonzalez & Co., inventoried under number 84,—\$6,875.31."

3. The detailed description of this property appears in the general inventory of said partition and division, which are made a part of this petition, containing a memorandum to the effect that the proper records have been made in the registries of Mayaguez and San German.

4. Of this property Mrs. Nadal, accompanied by her husband, Isidro F. Sanjurjo, alienated her interests in the ownership of the sugar house situated in Comercio Street the storehouse situated in the same street, and house number 74 on Mendez Vigo Street, by deeds executed on March 30, 1894, before Notary Rosendo Matienzo

to Dolores and Estebania Nadal, as to the interests in the first two estates, and to Dolores Nadal y Freyre as to the last mentioned house.

5. By deeds of September 9, 1899, executed before Santiago R. Palmer, a notary of San Juan, the said Sanjurjo, the husband of Altagracia, appearing as the attorney in fact of his wife, executed a mortgage in favor of the American Colonial Bank of Porto Rico, for the sum of \$2,000, the encumbrance having been subsequently increased by \$500, in addition to \$400 for interest and costs, upon the estate situated at number 56 Mirasol street. And although Mrs. Nadal does not remember having granted her husband any power of attorney, she accepts for the sole purpose of this complaint the validity and effectiveness of the mortgage referred to, without prejudice to her right of action to contest, in the proper manner, the authenticity of the deed by which the mortgage was constituted.

6. Now then, Sanjurjo, making improper use of said power of attorney, taking advantage of the good faith of his wife, or by means and arts with which she is not acquainted, has collected, realized, alienated or concealed the greater part of the hereditary estate of his wife, purchasing and selling estates and property rights which he always recorded in his own name in the registry of property, and transacting other commercial operations not authorized or agreed to by Mrs. Nadal; it being well understood that in these transactions he has employed not only the products or income from the private property of the wife, but all or almost all of such property, as has been stated.

7. It is absolutely impossible on account of the vague knowledge which said lady has of the transactions made by her husband and on account of the haste with which this urgent complaint was written, to estimate in exact figures the amount of the collections and alienations made by Sanjurjo with respect to the hereditary property of his wife; but it may be affirmed that all the commercial actions and obligations designated in the second statement have been reduced to cash amounting to a sum which will not be less than \$60,000, of which Sanjurjo has disposed, furnishing Mrs. Nadal only the very modest expenses necessary for the maintenance of the domestic home.

8. At the present time Sanjurjo has recorded in his favor in the Registry of Property of Mayaguez the following property:

An estate named Carmen, situated in the barrio of Miradero of this municipal district, consisting of 239 cuerdas and 486 thousandths, equivalent to 94 hectares, 12 ares, and 73 centiares of land, containing a frame dwelling house, a masonry building and sheds for the manufacture of bricks; which estate is bounded on the north by Oro creek, lands belonging to Francisco Ramos, to the widow of Rocafort, the estate of Lacourt and to Olivieri Hermanos; on the east by a vecinal road, and lands belonging to Adolfo Gomez, Juan Luciano, Genaro Cartagena, Manuel Bengoa, Pedro Agostini, and another road; on the west by lands which formed part of the same estate, by other lands belonging to Antonio Lopez, Juan Rolon, Francisco Borrero, Ramon Ruiz, Luis Cartagena and the main

road, and a vicinal road from Añasco to Oro Creek; and on the south by property belonging to the Agricultural Station and Agostini Hermanos, by lots belonging to Mercedes Segarra, to Sanjurjo himself, and to Pedro Rosello, by a projected street, and by the Yaguez river. Sanjurjo acquired this estate by purchase from Pedro

122 Rosello, according to a deed of October 25, 1900, executed before Notary Alfredo Arnaldo; which document is recorded in the registry of property at folio 15, estate number 2350, volume 45 of Mayaguez.

A right of mortgage constituted by Juan Agostini y Martinez, for the sum of 9,000 provincial pesos, on the estate of Juanita, situated in the barrio of Furnias, number 1 of Las Marias, consisting of 827 cuerdas, that is to say, 325 hectares, 4 ares, 32 centiares of land, with a number of structures thereon; said estate being bounded on the east by lands belonging to Rodulfo Alayon and Manuel Joaquin Medina; on the north by a private road; on the west by lands belonging to the Olivieri Hermanos and Jose Cintron; and on the south by property belonging to Felix Hernandez and Enrique Brugman, according to a deed of February 6, 1895, recorded in the registry of property at folio 230, estate number 436, of volume 8 of Las Marias.

9. The plaintiff does not know whether or not the defendant has other property recorded in his name in the Registry of Property of Mayaguez, in that of San German, or in another registry in the island; but gives assurance of the fact, supported by full testimony, that all the property which appears in the name of Sanjurjo, in so far as the amount thereof does not exceed the hereditary estate of which he has disposed, was acquired with money derived from said estate, of the exclusive ownership of Mrs. Nadal.

With the same money Sanjurjo constructed a number of houses situated on 11 de Agosto street of this city, but these estates do not appear in the registry, because the alleged owner prefers to conceal rather than secure rights which he wishes the legitimate owner to remain in ignorance of.

123 10. Not a single time during the course of nine years has

Sanjurjo rendered an accounting to his wife of the capital he administered, arrogating to himself rights which had not been granted to him by any public document, nor in any other valid and efficient form.

11. The purpose of Sanjurjo to ruin his wife, as he has ruined her, is so preserving that even now, after offering to render accounts and return the estate dissipated, in the private conferences between the two spouses and other relatives and friends of Mrs. Nadal, he hastened to alienate in a surreptitious manner the property of which he has made himself the owner; and on the 29th day of last month there was filed in the registry of property a deed of the assignment of the mortgage credit executed by Isidro F. Sanjurjo in favor of Isaac F. Martinez. And Mrs. Nadal does not know and doubts whether this complaint will be in time to save the remainder of the wreck of her fortune, or whether she will have to beg in her old age charity in the public streets.

Legal Grounds.

I. The property which the wife acquires after the marriage without constituting the dowry or an addition thereto, partakes of the character of Paraphernal property, according to article 1381 of the (former) Civil Code.

II. The wife retains the ownership and administration of such property, and the husband cannot perform any acts with regard thereto without the intervention or consent of the wife. Articles 1382 et seq., of the said code.

124 III. In accordance with these principles it cannot be understood how Isidro Sanjurjo disposed of the property of Altagracia Nadal, a case being presented which is really difficult to classify on account of its juridical nature. But in any event the conduct of this gentleman can be regulated only by three forms: the administration of paraphernal property, the negotiorum gestor, and an agency.

IV. If the matter be considered from the standpoint of a quasi-contract, there is no doubt that Sanjurjo is liable for his management, is compelled to render an accounting, and to make good any damages caused his wife according to the rules embodied in articles 1887 and 1888 and concordant articles of the said substantive text.

V. If the administration of paraphernal property is involved, the husband must answer for the administration; and if he has disposed of such property, he must constitute a mortgage for the amount of the price he may have received, returning in any case the property not alienated upon demand of the legitimate owner thereof. Articles 1389, 1390, 1391, and 1367, and other related articles of the aforesaid code.

VI. But if the acts of Sanjurjo are to be regulated by an agency, then he could not collect except upon instructions from his principal; and if he has acted in contravention of such instruction, he is obliged to indemnify the loss and damages, aside from the liabilities of a more serious character which he may have incurred. In any event, he would have been obliged to render an accounting of his transactions and pay to the principal whatever he might have received under the agency. Articles 1714, 1718, and 1720 and 1726 of the said law.

125 VII. Negotiorum gestor, agency and administration and disposition of paraphernal property; contract or quasi-contract, specific or unnamed, whatever it may be called, the obligation which he has contracted of rendering an accounting and returning to his wife the capital which belonged and belongs to her under so sacred a right as a will, is just, evident, unavoidable and inexcusable.

VIII. Furthermore, property purchased with the money belonging exclusively to the wife belongs to her, according to subdivision 4 of article 196 of the Civil Code. For which reason the property described in the eighth statement of fact, even though recorded in favor of Isidro Sanjurjo, and all the property which he possesses not exceeding in value the amount of the hereditary estate of which he was disposed, belongs to Altagracia Nadal, because it was pur-

chased or acquired with her money in the peculiar manner set forth in the statement of facts of this complaint.

IX. And the administration and disposition of this property is governed by the same provisions which have been invoked with regard to the paraphernal property.

X. Finally, the defendant in losing this action must be taxed the costs, in accordance with the provisions of Order 118, rule 63, of August 15, 1899.

By virtue of the above statements, exercising the personal and real actions based on the preceding grounds, I respectfully pray the court to admit this complaint, filed in the capacity in which I appear, and the documents I attach, that it designate a judge to conduct
126 the examination in an ordinary action, and that the complaint be served on Isidro F. Sanjurjo y Skerret, a resident of this city, summoning him to appear and make answer thereto within a period of twenty days not subject to extension; and, finally, after the proper legal proceedings, hold such complaint to lie, and render judgment: 1. Adjudging the defendant to render exact accounts of the administration of the hereditary property of Altagracia Nadal, or of the management or agency which he has discharged, adjudging him to indemnify such property as he may have alienated, assigned or encumbered in some form, with the subsidiary obligation of constituting a mortgage for the amount in cash of the rights or sums which he may have received as the proceeds of the property of which he may have disposed; 2. Holding that the property described in the eighth statement of facts of this complaint, and any property which appears in the name of the defendant as belonging to him, is the private property of the wife, in so far as the value thereof does not exceed that of the said hereditary property of which he may have disposed; 3. To adjudge him likewise to pay all the costs. Justice prayed for.

First supplementary prayer. This party proposing to present its evidence, it prays the court, in due time, to admit evidence in the action. Justice *ut supra*.

Second supplementary prayer. This party seeks in this action, among other things, the recovery of the ownership of real property and the constitution of a mortgage. It presents a document so legitimate and efficient as that containing the said partition and
127 division of the estate, which shows the hereditary share of the plaintiff, who offers to make indemnity for any damages which may be caused the defendant in the event of judgment being rendered in his favor, thus complying with the requisites of subdivision 1 of article 42, the first paragraph of article 43 of the Mortgage Law, and article 91 of the Regulations for the execution of the same.

Therefore, a cautionary notice of the complaint should be entered in the registry of property, without which, on the grounds set forth in the above statements of fact, especially the eleventh, the purpose of the complaint would be absolutely frustrated, and, in a proper case, the pronouncements of the judgment also.

A poor woman who had a considerable fortune is reduced to pov-

erty in the unprotected days of her old age, and in applying for the cautionary notice of her complaint she has in her favor the serenity of justice and the benevolence of pity.

On account of these principals and reasons of such a grave character, I likewise pray the court to order a cautionary notice of this complaint to be made in the registry of property, the proper mandate being issued for the purpose, in duplicate, addressed to the registrar of property in Mayaguez and San German, in which property is recorded in the name of the defendant, Justice *ut antea*.

Third Supplementary Prayer. In concluding this petition this party has ascertained that the defendant appears as the owner of two houses and a lot on Rosa street, seven houses on 11 de Agosto street, in this city, and a rural estate in the barrio of Hornigueros, which, for the purposes of registration, belongs to the district of San German. And reiterating the facts and conclusions of this complaint, I pray the court to consider the foregoing statements to have been made for the purposes of the entry applied for.

Fourth Supplementary Prayer. Proceedings to effect a conciliation are not necessary in cases of an urgent character. Because, if the cautionary notice is of a most urgent character and requires as an indispensable requisite the filing of the complaint, the complaint participates in an intense manner of the urgent nature of the notice.

The court will understand the complaint, for proceedings to effect a conciliation between spouses who live under the same roof, would lead to violent and dangerous scenes which would make this judicial claim absolutely impossible; and furthermore, the slightest indication of the institution of judicial proceedings would encourage the purposes of the defendant of alienating all his property, as he has been doing, by which the end sought by the action would be frustrated.

And as the absence of proceedings to effect a conciliation does not produce damages of any kind, if they be held or attempted in bringing an action, as provided for in article 460 of the Law of Civil Procedure, I finally pray the court to admit the complaint, for the sole purpose of making an order for an entry of a cautionary notice thereof, suspending the proceedings until a certification is presented to the effect that proceedings to effect a conciliation have been held or attempted. This is justice prayed for in the principal and supplementary prayers, in Mayaguez, May 1, 1901.

(Statement of corrections in original.)

(Signed)

JOSE DE DIEGO.

To the District Court:

Alfredo Arnaldo and Jose de Diego, attorneys for the plaintiff and defendant in the suit of Altagracia Nadal against Isidro F. Sanjurjo, in a claim for paraphernal property, and other matters, in compliance with the instructions of our clients who sign this deed in proof of their conformity we desist from continuing the said suit.

As was to be expected, the litigating spouses have come to a harmonious understanding in the disputed matter, each one recognizing their respective rights.

We respectfully pray the court that, this instrument being presented, it will be pleased to hold that the parties have desisted from continuing the action, each litigant paying the costs incurred on his initiative; and, furthermore, that an order in duplicate be sent to the registrar of property so that he may cancel the cautionary notice of the complaint, and that the record be placed in the archives.

Supplementary Prayer.

Both parties needing the papers presented by the plaintiff, we pray the court that it will order them detached and delivered, leaving in the record a succinct extract of the said papers.

130 Justice prayed for the principal and supplementary prayer, in Mayaguez, on the 18th of November, 1901.

(Signed)

JOSE DE DIEGO.

(Signed)

ALFREDO ARNALDO.

(Signed)

ALTAGRACIA NADAL.

(Signed)

ISIDRO F. SANJURJO.

MAYAGUEZ, November 21, 1901.

In so far as concerns the principal prayer, it will be held that they have desisted from continuing these matters and they will be placed in the archives, the cautionary notice of the complaint being cancelled and the proper orders being issued. In answer to the supplementary prayer, let the papers be detached and delivered and the proper note made. The members of the court so decided and signed. To which I certify.

(Signed)

J. A. ERWIN.

(Signed)

ARTURO APONTE.

(Signed)

LUIS MENDEZ VAZ.

(Signed)

BENITO FORES.

131 Thereupon in order to further maintain the issues on his part, counsel for defendant offers in evidence, in conjunction with the record last produced, a notarial agreement entered into between said Isidro Fernandez Sanjurjo and his wife Altagracia Nadal y Freyre, dated on the 16th day of November, 1901, whereby it was claimed that the latter had relinquished to the former all claim and right to the property in controversy in the present suit. Counsel for plaintiff objected to the introduction of said instrument on the ground that, it was immaterial to any of the issues herein, because it pretended to release only rights in her paraphernal property; and, second, because it was incompetent and illegal in that the law of Porto Rico prohibited, and still prohibits, any separation or settlement of property rights between husband and wife during the continuance of the marriage relations in any other manner than as a result of a judicial proceeding; which objection was overruled by the Court to which ruling of the Court counsel for plaintiff excepted. Said document was then admitted in evidence, being in the Spanish language, a true translation of which into the English language is in words and figures following, *w* to-wit.

132

Mariano Riera Palmer.
 Lawyer-Notary.
 Mayaguez, P. R.

Copy of Original.

Corrected.

Number Three Hundred and Eight.

In the City of Mayaguez, on the 16th day of November, 1901, before me, Licentiate Alfredo Arnaldo y Sevilla, a member of the Notarial Association of Porto Rico, residing in this city, appeared:

Altagracia Nadal y Freyre, of legal age, married, a property owner and resident of this city, I certify that she is known to me and that her occupation and place of residence also are known to me and, she having in my judgment the necessary legal capacity to execute this instrument, says:

First: That on the first day of May of the current year she filed a complaint against her husband Isidro Fernandez Sanjurjo, demanding an accounting of the administration of her paraphernal property; that the property now in the name of Sanjurjo be declared her exclusive property in so far as may be necessary to equal the value of her paraphernal property unaccounted for; and that he be compelled to give her a mortgage in said amount.

Second: That in the course of the legal proceedings she and her husband went over their accounts together and as a result thereof it was found that he had received ten thousand dollars as the product of her paraphernal property sold by him, of which amount
 133 he turned over her five thousand in money and gave her a mortgage for the other five thousand, by a written instrument executed before the attesting notary on the 16th of the current month.

Third. That in view of the facts cited, she obligates herself to dismiss the complaint mentioned in paragraph numbered First and renounces all the rights and interests which she might have against her husband because of the facts stated in the said complaint.

I read this instrument to her in the presence of Fernando Strazara and Carmelo Bascaran, residents of this city, and after I had informed her of her right to read it for herself but which right she waived. To all of which I certify. Altagracia Nadal, F. Strazara, C. Bascara. Sealed—Alfredo Arnaldo.

Agrees exactly with the original instrument which is *is* in the register of the former notary of this city Alfredo Arnaldo y Sevilla, now in my charge as general archive keeper of the district. I certify to and at the request of the Honorable Attorney General issue this copy, in three typewritten sheets, which I seal, sign and rubricate at Mayaguez on the 12th day of July, 1901.

Corrections: du-i-e-valid.

LCDO. MARIANO RIERA PALMER.

[Notarial Seal and an excise tax stamp of the value of 50 cents.]

134 Thereupon further to maintain the issues on his part, counsel for defendant offered in evidence a document executed by said Ysidro Fernandez Sanjurjo conferring upon his said wife full authority to dispose of her paraphernal property, which counsel for defendant promised to show was a part of the same transaction in which the last previous document was executed. Counsel for the plaintiff thereupon objected to the admission of said document on the same grounds interposed to the admission of said last preceding document. The Court overruled said objection, to which ruling of the Court counsel for plaintiff excepted. Said document was then admitted in evidence, being in the Spanish language, a true translation of which into English is in words and figures following, to-wit:

135 Jose de Diego,
Lawyer and Notary.

Marital Consent and Waiver Executed by Isidro Fernandez Sanjurjo in Favor of His Wife, Altigracia Nadal y Freyre, November 16, 1910.

Number One Hundred and Twenty-seven.

At the city of Mayaguez on the 17th day of November of the year of our Lord, 1901, before me Attorney Jose de Diego Martinez, a notary of the Association of Porto Rico, residing and having my office in this city, the witnesses to the act being present, appears Isidro Fernandez Sanjurjo y Skerret, of legal age, married, a property owner and a resident of Mayaguez.

I certify that I know the executor of this instrument, his business and residence and he assures me that he is in the enjoyment of his civil rights and he has, in my judgment, the necessary legal capacity to execute the present instrument of marital consent, and waiver, as such, the executor of this instrument.

First clause. Confers on his wife, Altigracia Nadal y Freyre, full authority to dispose of her paraphernal and private property and also to receive and apply to whatever use she may see fit the natural and civil fruits of the same, to execute in reference to them all kinds of real, personal and mixed contracts of a civil or commercial nature, for which purpose she may appear before notaries public to execute

136 instruments of purchase and sale, exchange, mortgages, annuities (censos), servitudes, antichresis, lease, usufruct, life income, insurance, loan, deposit, promissory notes, partnership, settlements and compromises and any other wherein the before mentioned contracts are executed. In the same way she may execute private documents, appear in the government offices and exercise before the courts all actions and demurrers to which she is a party in regard to the property before referred to, commencing and prosecuting the proceedings, motion and remedies through all the stages thereof.

Second. For the carrying out of all the aforesaid, the executor of this instrument gives in advance his absolute and full consent,

accepting as final all that Mrs. Nadal may do by virtue of this authorization.

Executed and signed before the witnesses to this instrument Carmelo Bascaran Quintero and Vincente Bolta Marcano, residents of this city and after reading this instrument to them all and which they heard at a single sitting and each one of them waived the right which I informed them they had to read personally this instrument and to all of its contents, I, the attesting notary, certify. Isidro F. Sanjurjo,—C. Bascaran—Vte. M. Balta,—Signed, Jose de Diego.

This copy corresponds faithfully with the original instrument number one hundred and twenty-seven which is in the protocol of public instruments in my charge, pertaining to the year one thousand nine hundred and one to which I refer; and for the purpose of sending it to the Honorable Attorney General of Porto Rico, I issue this copy which I seal and sign on two sheets of typewritten paper, noting the same in the register, at Mayaguez, on the 30th day of September, nineteen hundred and ten.

JOSE DE DIEGO.

137 Thereupon further to maintain the issues on his part, counsel for defendant offered in evidence an instrument of legal mortgage, dated on the 16th day of November, 1901, executed by said Ysidro Fernandez Sanjurjo in favor of his wife for the sum of \$5,000, stated by counsel for defendant to be the same legal mortgage referred to in the last will and testament of said Altagracia Nadal y Freyre. Counsel for plaintiff objected to the introduction of said instrument on the same grounds specified to the introduction of the two instruments last preceding, and on the further ground that it was illegal and void as being one of the results of the agreement between husband and wife, heretofore introduced against his objection and claimed by him to be illegal. The Court overruled said objection, to which ruling of the Court counsel for plaintiff excepted. Said document was thereupon admitted in evidence, being in the Spanish language, a true translation of which into English is in words and figures following, to-wit:

138

Mariano Riera Palmer,
Attorney-Notary,
Mayaguez, P. R.

Copy of Original.

Corrected.

Number Three Hundred and Seven.

At the city of Mayaguez on the sixteenth of November, one thousand nine hundred and one, before me Alfredo Arnaldo Sevilla, lawyer, and a notary of the Association of Porto Rico, residing in the said city of Mayaguez, appeared Isidro Fernandez Sanjurjo y Skerret, of legal age, married, a property owner and a resident of this city, and his wife Altagracia Nadal y Freyre, of legal age and a property owner.

I certify that both the said parties are known to me as are also their occupation and place of residence, and that they are in the enjoyment of their civil rights and that in my judgment they have the necessary legal capacity to execute this mortgage instrument.

Sanjurjo Skerret says:

Property.

First. That he is the owner of a cattle farm in the barrio of Guanajibo of the municipality of Cabo Rojo and judicial district of this city. The said farm contains fifty hectares, six areas and forty-eight centareas and is bounded on the north by the river Guanajibo, on the south by properties of Tomas and Jose Binetti; and on the west by the plantation Cornelia and farm of Ramon Binetti.

139

Title.

Second. That he bought the farm from Federico Philippi by deed executed before the attesting notary to this instrument, on the ninth day of the current month.

Encumbrances.

Third. That it is free from encumbrances.

Mortgage.

Fourth. That his wife Altagracia Nadal y Freyre brought to the marriage all the property, rights and interests which she inherited from her parents; that she having alienated a good part of said property, he acknowledges having received from her five thousand dollars of the price received by her from the sales thereof and he obligates himself to execute a mortgage in her favor for the said sum of five thousand dollars.

Offer to Execute Mortgage.

Fifth. That by virtue of the obligation mentioned in the preceding paragraph he offers to execute a mortgage in favor of Altagracia Nadal y Freyre on the farm described in the paragraph numbered First in this instrument and which she may appraise and accept.

Constitution of Mortgage.

Sixth. That to guarantee the five thousand dollars, the value of the mortgage offered, and five hundred dollars more as stipulated costs, Isidro Fernandez Sanjurjo y Skerret constitutes a mortgage in favor of Altagracia Nadal y Freyre on the farm described in paragraph numbered First in this instrument, and which farm, for the purposes hereinbefore mentioned, he values at six thousand
140 dollars renouncing any right to a new appraisement or right of action for a new appraisement, and submits himself to the jurisdiction of the courts and tribunals of this city; and

Seventh. Altagracia Nadal y Freyre, deeming sufficient the mortgage offered, accepts this instrument in all its parts.

Warning.

And I, the notary, called the attention of the parties executing this instrument to the facts:

That a preferred lien on the property mortgaged is reserved in favor of the Island and the Municipality to guarantee taxes due and unpaid during the last fiscal year;

That they should deliver a copy of this instrument to the registrar of property so that it be recorded, otherwise it would not be a defense against the claims of third parties, neither would it be received as valid in the offices of the government, nor in the courts or tribunals.

I informed the parties that they had the right to read this instrument for themselves, which right they waived, and I therefore read it to them in the presence of the witnesses Carlos Doittau and Carmelo Bascaran, residents of this city and it was then executed and signed. To all of which I certify. Isidro F. Sanjurjo.—Altagracia Nadal.—Carlos Doittau.—C. Bascaran.—Sealed: Alfredo Arnaldo.

This is a true and faithful transcript of the original instrument which is in the protocol of public instruments of the former notary of this city, Alfredo Arnaldo. I certify to this as general archive keeper of the district and at the request of the Honorable Attorney General I issue this copy in four sheets and I seal, 141 sign and rubricate it at Mayaguez on the thirteenth day of July, one thousand nine hundred and ten. Corrections: f-for-appraisement-because. All valid.

LCDO. MARIANO RIERA PALMER.

[Notarial seal and an excise stamp of the value of fifty cents.]

The foregoing instrument was recorded from another copy, on July 1, 1902, at fol. 182 of vol. 42 of the municipality of Cabo Rojo, property No. 633, second inscription.

San German, October 31, 1910.

I certify: The Registrar,

[SEAL.]

RAFAEL B. SAMA.

Thereupon further to maintain the issues on his part, counsel for defendant offered in evidence the deed of assignment of mortgage credit mentioned in said last will of Altagracia Nadal y Freyre, to the introduction of which counsel for plaintiff objected on the same grounds specified to the introduction of the last instrument. Said objection was overruled, to which ruling of the Court counsel for plaintiff excepted. Said document was thereupon admitted in evidence, being in the Spanish language, a true translation of which into English is in words and figures following, to-wit:

142

Testimony.

Corrected.

Number Sixty-eight.

In the City of Mayaguez, April ten, one thousand nine hundred and six, before me Licentiate Juan Quintero y Gonzalez De Quijano, Attorney at law and Notary Public of Porto Rico, residing in this city, accompanied by the witness hereinafter to be mentioned, appeared Margarita Nadal y Freyre, married, of legal age, property owner and a resident of this city, party of the first part, and Rafael Martinez y Nadal, of legal age, married, property owner and a resident of this city, party of the second part. I certify to my knowledge, and to the profession and residence of the parties appearing, who assure me that they freely administer their property, they having, in my opinion, the legal capacity necessary for the execution hereof. The party of the first part sets forth:

First. That on November sixteen, one thousand nine hundred and five, (sic) Isidro Fernandez Sanjurjo executed in her favor a deed which reads as follows: "Number three hundred and seven. In the city of Mayaguez, November sixteen, one thousand nine hundred and one.—Before me—Licentiate Alfredo Arnaldo y Sevilla, Attorney at law and Notary, of the Bar of Porto Rico, residing in aforesaid city—Appeared—Isidro Fernandez Sanjurjo y Skerret, of legal age,

143 married, property owner and a resident of this city, party of the first part—and his wife, Altagracia Nadal y Freyre, of legal age, property owner, party of the second part—I certify to my knowledge and to the profession and residence of the parties appearing, who are in the enjoyment of their civil rights, and both having, in my opinion, the legal capacity necessary for the execution of this deed of legal mortgage, said Sanjurjo Skerret sets forth:—Estate—First: That he is the owner of an estate dedicated by him to cattle breeding, situated in barrio Guanajibo, within the municipality of Cabo Rojo and Judicial District of this city; said estate consists of fifty hectares, six areas and forty-eight centares, bounded on the north by river Guanajibo; on the south by estates of Tomas and Jose Binetti; on the east by estate of the aforesaid Binettis, and on the west by plantation "Cornelia" and estate of Ramon Binetti.—Title.—Second: That he acquired the title thereto by purchase from Federico Phillipi according to deed executed before the Notary authorizing the present, on the ninth inst.—Incumbrances—Third: That the same is free from incumbrances—Legal Mortgage—Fourth: That his wife, Altagracia Nadal y Freyre, brought to the marriage, by inheritance from her parents, the properties, rights and actions specified in her portion, and she having alienated a large portion of said properties and rights, he recognizes that he is under obligation to constitute a legal mortgage for five thousand dollars which he has received out of the price of the various alienations of properties comprised in her portion, made by his wife—Offer of Mortgage—Fifth: That by reason of the obligation mentioned in the preceding statement, he offers to constitute a mortgage in favor of Altagracia Nadal y Freyre—for five thousand dollars, on the estate described in the first statement hereof, in order

that she may authorize and admit the same—Constitution of

144 Mortgage—Sixth: That to secure the five thousand dollars, amount of the legal mortgage offered, and five hundred more for costs, Isidro Fernandez Sanjurjo y Skerret constitutes a legal mortgage in favor of Altagracia Nadal y Freyre upon the estate described in the first statement hereof, which estate he appraises for purposes of foreclosure in six thousand dollars, waiving any new appraisalment or right of action looking thereto, and submits to the jurisdiction of the courts and tribunals of this city; and Seventh: Altagracia Nadal y Freyre considers sufficient the mortgage offered, and accepts in all its parts the present deed—Notifications—And I, the Notary, notify the parties hereto: That a preferential lien on the realty mortgaged is reserved to the Island and Municipality for the purpose of securing the recovery of unpaid out-standing taxes for the last fiscal year; that with a copy of this deed they must apply to the Registry of Property for the record thereof without which requisite it cannot prejudice a third person nor be admitted in the offices of the Government, nor in the Courts of Justice—Thus do they execute and sign this deed before the witnesses Carlos Doittau and Carmelo Bascarrah, residents of this city, after I had read it to them, in a single act, and informed them of their right to read it for themselves, which they waived; to all of which I certify—Isidro F. Sanjurjo Altagracia Nadal—Carlos Doittau—C. Bascarrah—Signed: Alfredo Arnaldo—The foregoing is a faithful transcript of the original on file in the protocol for the year one thousand nine hundred and one, under number three hundred and seven of this Notarial Office in charge of Alfredo Arnaldo y Sevilla, to which I refer—In witness whereof and at the request of Altagracia

145 Nadal y Freyre, and as substitute for Arnaldo y Sevilla, I issue the present under my signet, signature and rubric, making a memorandum thereof on the original, in Mayaguez, this fourth day of April, one thousand nine hundred and six—Signed: Eugenio Geigel—There is a fifty cent stamp."

Second. That the mortgage credit above transcribed has not been collected, assigned nor incumbered by any lien or obligation whatsoever.

Third. That disposing thereof, as owner, she assigns and conveys to Rafael Martinez Nadal the credit mentioned in the document hereinbefore inserted, for the sum of three thousand dollars, which Altagracia Nadal y Freyre acknowledges having received in this act, and to her entire satisfaction inasmuch as she is thereby subrogated in her right by Martinez Nadal, so that he may collect the same from Isidro Fernandez Sanjurjo in the manner he should deem most convenient.

Fourth. Rafael Mangual (sic) y Nadal accepts this assignment.

Fifth. I, the notary, notify the contracting parties that notice of this assignment must be given to the debtor Isidro Fernandez Sanjurjo, the assignor being liable to the creditor for the damage to which the omission of said requisite may give rise. I, the notary, notify the parties: That a copy of this document must be taken to the Registry of Property for entry, without which requisite it

cannot prejudice a third person, nor be admitted in courts of justice, nor in the offices of the government. That a legal preferential mortgage is constituted and remains in favor of the People
146 of Porto Rico and of this Municipality. Thus do they execute the present before the witnesses Alcides Torres Garcia and Juan R. Acosta, residents of this city, who are present at this act, after I had read the contents hereof to all of them, and informed them of their right to read it for themselves, which they waived; to which I certify—Altagracia Nadal y Freyre—Rafael Martinez Nadal—Juan R. Acosta—Alcides Torres Garcia—Signed: Licentiate Juan Quintero.

The foregoing is a faithful transcript of the original deed which under number sixty-eight is on file in the protocol of public instrument for the year one thousand nine hundred and six of the Notarial Office formerly in charge of Juan Quintero, Esq., which protocol is now in the general archive under my custody, as Keeper of the Record for this District. In witness whereof and at the request of the Honorable the Attorney General, I issue this copy to which I affix my signet, signature and rubric on seven leaves of paper, in Mayaguez, this thirteenth day of July, one thousand nine hundred and ten.

[L. s.]

(Signed) LICENTIA TE MARIANO RIERA PALMER.

This instrument is not recorded because the legal mortgage of five thousand dollars to which the same refers was recorded in favor of Rafael Martinez y Nadal on October 17, 1907, because Altagracia Nadal y Freyre devised it to him in a closed testament executed at Mayaguez on April 27, 1906, which was protocolled on July 31st of the same year by Notary Juan Quintero y Gonzalez de Quijano in accordance with an order of the Judge of the District Court of Mayaguez of July 28th of the same year. This develops
147 from the third inscription of property No. 633 made at folio 183 of vol. 12 of Cabo Rojo.

The said Mortgage was later assigned by Martinez Nadal to Ricardo Mendez y Monsegur and by the latter to Dolores Garcia Sanjurjo who acquired the property by virtue of an execution the mortgage then being cancelled because of confusion of rights.

San German, October 31, 1910.

I certify:

The Registrar,

[SEAL.]

RAFAEL B. SAMA.

Thereupon further to maintain the issues on his part, counsel for defendant offered in evidence a certificate of the Registrar of property at San German for the purpose of showing, as stated by him, that plaintiff claimed title to said legal mortgage for \$5,000 under the last will and testament of said Altagracia Nadal y Freyre, and not under the assignment of said mortgage by her heretofore introduced in evidence. Counsel for plaintiff objected to the introduction of said certificate on the same grounds last hereinbefore specified. Said objections were overruled by the Court, to which

ruling counsel for plaintiff excepted. Said certificate was thereupon admitted in evidence, and its recitals showed the same facts stated in the certificate attached to said translation itself as above appearing, wherefore it is unnecessary to set forth the same verbatim herein.

Thereupon further to maintain the issues on his part, counsel for defendant offered in evidence the last will and testament of said Altagracia Nadal y Freyre in the Spanish language with a translation thereof into English, claimed by counsel for defendant to be the correct translation thereof.

Whereupon the following colloquy between the Court, counsel and the interpreter then took place:

148 Mr. BROWN: I now offer the will.

(To the Interpreter:) I will ask you is you examined the will and if that is a correct translation of clause seven.

The INTERPRETER: Yes, sir; to the best of my knowledge and belief.

The COURT: What is the difference, gentlemen

Mr. BROWN: Mr. Pettingill has this: "I also bequeath to my nephew Don Rafael Martinez y Nadal the legal mortgage executed by my husband in my favor over a cattle ranch situated in Guanajibo of Cabo Rojo, provided that the assignment of said mortgage which I made before a notary in favor of my said nephew, Don Rafael Martinez y Nadal, should not have been effective", and he has got in here: "and all of the rights and claims."

The INTERPRETER: No, sir; that conjunction is not in the Spanish text.

Mr. PETTINGILL: Admit that it is not

Mr. BROWN (continuing the reading): "which may remain to me in my property which are in the name of my husband." Is that "which are" or "which may be" in the name of my husband"? Is that correct: "which are"?

The INTERPRETER: Yes, sir.

Mr. PETTINGILL: There may be a difference in the Spanish. (After referring to both documents) Esten, is that indicative mood?

149 The INTERPRETER: No, sir; it is subjunctive.

Mr. PETTINGILL: You would translate it: "which are"?

The INTERPRETER: Yes, sir.

Mr. PETTINGILL: It is admitted that there is no 'and' in the Spanish text, and the translation made by the Interpreter reads: "I bequeath also to my nephew Rafael Martinez Nadal, the legal mortgage executed by my husband in my favor upon a breeding farm situated in Guanajibo de Cabo Rojo, in case that the assignment which I made of said mortgage before a notary in favor of my said nephew Rafael Martinez Nadal, should not be effective, all the rights and actions which I may have." I submit to Your Honor that that is not good English. It is true that in the Spanish there is no 'and', but I say that there are two things bequeathed, which we would put an 'and' between, and I want to ask the Interpreter what it means if it doesn't mean two things.

Mr. BROWN: We won't ask the Interpreter. We will ask the Court.

Mr. PETTINGILL: You have been asking the Interpreter.

The COURT: There is a dispute between you gentlemen. The Official Interpreter has got to control this question. There is lots of bad English and I suppose lots of bad Spanish. I was never well enough educated to use good English all the time.

150 The question is, what does that Spanish document mean in English, and this interpreter has to settle any dispute that may be between you.

Mr. BROWN: Mr. Pettingill wanted to ask him what that meant after it was translated into English.

The COURT: The Interpreter has said that the translation which the Attorney General has is correct.

Mr. PETTINGILL: I am submitting to that. Now I say that the meaning of that translation is not clear and I am asking the Interpreter to clear it up for us.

Mr. BROWN: You are asking him what it means.

Mr. PETTINGILL: Exactly, that is what clearing it up means. If it is not clear, then we must have some explanation to make it clear. Surely a clear translation must go to this court. I want to ask Your Honor to ask the opinion of the Interpreter whether the Spanish and this translation both do not mean that this bequest included both the legal mortgage executed by her husband in her favor and the rights and actions; if there were not two objects in that bequest.

The COURT: The Interpreter tells us that the translation which the Attorney General has is correct. Your motion is denied. Mr.

Pettingill. Give Mr. Pettingill an exception.

151 Said last will and testament, with the translation thereof so offered by the defendant, is thereupon admitted in evidence. Said translation is the same as that already offered on the part of the plaintiff, and hereinbefore appearing, except as to Clause 7th, thereof, which clause in the present translation reads as follows, to-wit:

"7th. In view of the good conduct of my nephew Don Rafael Martinez y Nadal, and taking into account his situation and the affection which he daily shows me, I bequeath to him a mortgage note upon the cane plantation known as La Margarita de Schroder, for the sum of five thousand four hundred dollars, as well as all the rights and actions therein. I also bequeath to my nephew, Rafael Martinez Nadal, the legal mortgage executed by my husband in my favor upon the cattle ranch situated in Guanajibo of Cabo-Rojo, in case the assignment which I made of the said mortgage in favor of my nephew aforesaid, Rafael Martinez y Nadal, shall not have become effective, all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband."

152 Thereupon further to maintain the issues on his part, counsel for defendant produced as a witness in his behalf JOSEA DE DIEGO, who being duly sworn, testified as follows:

My name is José de Diego. I am a lawyer by profession, and represented the wife, Altigracia Nadal y Freyre, in the filing of the complaint against the husband in the District Court of Mayaguez in May 1901. As a result of that litigation a compromise was entered into between the plaintiff and the defendant, and by virtue of this compromise certain——

Thereupon counsel for plaintiff, interrupting said witness, objected to any testimony from him as to what said compromise was on the following grounds, to-wit: First, that counsel for defendant had already introduced in evidence a notarial instrument showing that the terms of said compromise were in writing, and no oral evidence thereof would be admissible; and, second, because whatever knowledge the witness had of the terms of said compromise must necessarily have been derived from confidential communications from his client. These objections were overruled by the Court, to which ruling counsel for plaintiff excepted.

The witness then proceeded to state that certain properties were transferred to the wife and other properties were transferred to the husband. The properties transferred to the wife were conveyed to Francisco del Moral. The properties so deeded to said Francisco del Moral were properties of Sanjurjo that in the settlement were to go to his wife.

(Witness thereupon identified three deeds, dated on the 16th day of November, 1901, from Sanjurjo to Francisco del Moral as the deeds to which he had referred.)

153 Thereupon counsel for defendant offered in evidence the three deeds so identified, to the admission of which counsel for plaintiff objected on the ground that the matter sought to be proven by the introduction of said deeds is not within any of the issues made by the pleadings. This objection was overruled by the Court, to which ruling of the Court counsel for the plaintiff excepted.

The said three instruments or deeds were in the Spanish language, true translations of which into English are severally in words and figures following, to-wit:

Deed of Sale Executed by Isidro Fernandez Sanjurjo in Favor of Francisco Del Moral y Nadal, November 16, 1901, Mayaguez, Porto Rico.

Number One Hundred and Twenty-five.

In the City of Mayaguez, November sixteen, A. D., one thousand nine hundred and one, before me Licentiate Jose de Diego y Martinez, Notary, of the Association of Porto Rico, with residence and office in this city, the witnesses hereto being present, appear Isidro Fernandez Sanjurjo y Skerret, property owner, party of the first part; and Francisco del Moral y Nadal, merchant, party of the

second part, both being of legal age, married and residents of Mayaguez.

I certify to my knowledge and to the profession and residence of the parties appearing, who assure me that they are in the full enjoyment of their civil rights, and have, in my opinion, the legal capacity necessary for the execution of this deed of purchase and sale.

In that understanding, the above mentioned parties set forth the following facts:

First, Fernandez Sanjurjo is owner of the parcels of land herein-after described:

A. A house lot measuring nine varas front,—seven meters, fifty-two centimeters—by twenty-four varas depth—twenty meters, six centimeters,—situated at the extension of the former San Jose Street, now "Avenida 11 de Agosto," of this city, by which it is bounded on the north; on the south, by more (sic) lands of Alfredo Cristy; on the east, by a house lot of Juan Sojo, and on the west, by a house and lot belonging to the party of the first part. Sanjurjo.

B. A house lot measuring thirty-nine meters, front, by twenty meters deep, situated at the extension of the former San Jose Street, now "Avenida 11 de Agosto," of this city, by which it is bounded on the north; on the east, by lands belonging to Alfredo Cristy; on the south, by lands of plantation "Carmen," and on the west, by lands of the same plantation, distant one meter from the mangos alley on said lands.

C. Another house lot measuring five hundred and twenty-three meters, eighty-four centimeters and ninety (sic) millimeters, square, situated at the extension of old San Jose Street, now "Avenida 11 de Agosto," by which it is bounded on the south; on the east, by the yard of a house of Guillermo Cerda's; on the west by a house lot belonging to Alfredo Cristy and yard of the house of the Estate of Tomas Vargas.

D. And another house lot having five hundred and twenty-three meters, eighty-four centimeters and nine millimeters, square measurement, situated also at the extension of the former San Jose Street, now "Avenida 11 de Agosto," this city, bounded on the north, by the yard of the house belonging to the Estate of Tomas Vargas; on the south, by aforesaid street; on the east, by a house lot belonging to Maria Louisa Ansoategui, and on the west, by another house lot belonging to Clemencia Ansoategui. These two last house lots form a single body measuring one thousand forty-seven meters, sixty-eight centimeters, ninety-nine millimeters (sic) square, bounded on the north, by former San Jose Street, now "Avenida 11 de Agosto," on the east, by yard of the house of Guillermo Cerda's; on the north by house lot belonging to Alfredo Cristy and yard of the house belonging to Estate of Tomas Vargas, now Ernesto Patxot, and on the west by house lot belonging to Clemencia Ansoategui, now Eduardo Riera.

Second, Sanjurjo acquired the aforesaid parcels of land as follows: the one described under letter "A" by purchase from Alfredo Cristy y Vanel, according to deed authorized by Notary Ma-

riano Riera on May six, one thousand eight hundred and ninety-four; the one described under letter "B" by purchase from said Cristy, according to deed of January twenty-six, one thousand eight hundred and ninety-three, executed before the same Notary; and those comprised under letters "C" and "D" by purchase from Fernando Ansoategui, executed before aforesaid Notary of January twenty one thousand eight hundred and ninety-three.

156 Third. On the first described lot Sanjurjo has subsequently built a masonry single floor zinc roofed house, with an iron balcony, which building has a frontage of six meters by sixteen deep. On the grounds marked letter "B," said Sanjurjo has built three single floor high zinc roofed masonry houses, with iron balconies, each house measuring twelve meters front, by fourteen deep; two of them divided by a party wall, the other being separated from the body of the two first mentioned by an entrance alley. On the area forming the body of the lots described under letters "C" and "D," said Sanjurjo likewise constructed three other single story, zinc roofed Masonry houses, with iron balconies, each measuring ten meters, front, by seventeen and a half deep. The seven buildings are situated on the old San Jose Street, now called "Avenida 11 de Agosto," but none of them has the street number.

Fourth. The said Sanjurjo retains the absolute ownership of the above mentioned properties, which have not been alienated or incumbered.

And in fulfilment of the agreement, Isidro Fernandez Sanjurjo y Skerret and Francisco del Moral y Nadal, both of their own right execute the following.

Deed.

Clause First. Said Fernandez y Sanjurjo sells and conveys to said Moral the absolute ownership appertaining to him in the lands and buildings described in the first and third statements hereof; it being understood that the ownership carries with it the right of possession and all the natural and civil accessions of the alienated properties.

157 Second. The vendee and vendor are both subject to the obligations arising from the contract.

Third. The sale is made for the sum of ten thousand dollars, which Sanjurjo declares having previously received from Moral; whereupon I, the Notary, notify them, that, the receipt of the money having been acknowledged, the contract shall remain in force, although it may afterwards be shown that the delivery of the purchase money was not made.

Fourth. The lump sum forming the price, is distributed in the following manner among the properties alienated; one thousand dollars, for the house lot described under the letter "A," four thousand five hundred dollars, for the area composing the lands described under letter "B," and four thousand five hundred dollars for the lands specified under letters "C" and "D" in the preceding statement, the houses standing on said lands being included in the prices enumerated.

Fifth. The parties executing the present are entirely satisfied with the agreement made, and place themselves under the jurisdiction of the insular courts, this city being designated for all the proceedings to which this contract may give rise.

Finally, I, the Notary, made and enter these notifications: 1. The State, the People of Porto Rico and the Municipality, have a legal preferential lien on the alienated realty for the recovery of outstanding taxes for the last fiscal year; 2. A first copy of this deed must be taken to the Registry of Property for entry, without which requisite it cannot prejudice a third person, nor be admitted against him in courts of justice, councils or officers of the Government.

Thus do they execute and sign this deed before the witnesses thereof Carlos Doittau y Ponce de Leon and Carmelo Bascaran y Quintero, residents of this city, after I had read the document to them, all of whom heard it in a single act, and waived their right, of which I informed them, to read it each for himself. To the whole contents hereof I, the Notary, certify—Isidro F. Sanjurjo—F. del Moral—C. Bascaran—Carlos Doittau—Signed, Jose de Diego.

The foregoing is a faithful transcript of the original deed No. 125, on file with the protocol of public instruments appertaining to the Notarial Office under my charge, for the year one thousand nine hundred and one. And to forward to the Honorable the Attorney General of Porto Rico, I issue this copy to which I affix my mark and signature on four leaves of typewritten paper, after taking a memorandum thereof, in Mayaguez, this thirteenth day of July, one thousand nine hundred and ten.

[L. s.]

(Signed)

JOSE DE DIEGO.

Dr. Joaquin Servera Silva, registrar of property of this city and its mortgage district. I certify that the foregoing instrument was recorded from another copy of the same, on January 6, 1902, at fols. 249 over of vol. 47 of this city and 2 and 5 over vol. 48 of this municipality, properties Nos. 2467, 2468 and 2469, second inscriptions.

At the request of the Hon. Attorney General in matters concerning the People of Porto Rico, I issue these presents, without fee charges, at Mayaguez, October 28, 1910.

DR. JOAQUIN SERVERA SILVA.

- 159 *Deed of Purchase and Sale Executed by Don Isidro F. Sanjurjo to Don Francisco Del Moral, on November 16, 1901, Mayaguez, P. R.*

Before Don Alfredo Arnaldo y Sevilla.

Mariano Riera Palmer.
Abogado—Notario.
Mayaguez, P. R.

Copy of Original.

Corrected.

Number three hundred and six.

At the city of Mayaguez on the 16th day of November, 1901, before me, Alfredo Arnaldo Sevilla, lawyer and notary of the Association of Porto Rico and residing in Mayaguez, appeared Isidro Fernandez Sanjurjo y Skerret and Francisco del Moral. Both are of legal age, married and reside in the city of Mayaguez. The party first named is a property owner and the other a merchant.

I certify that both parties to this deed are known to me, as are also their occupations and place of residence. Fernandez Sanjurjo, having in my judgment the necessary legal capacity to execute this deed of purchase and sale, says:

First. That he is the owner of a parcel of land in this city, on Rosa street corner of Jardines; that it has a frontage of twenty meters and eighty centimeters and a depth of twenty-nine meters and twenty-six centimeters; that it is bounded in front by Rosa street, at the back by a property of the estate of Salvador Mestre; on the right by Jardines street, and on the left by a house of Felix Garcia de la Torre and Petra Libran.

Second. That he bought the said parcel of land from Fernando Vazquez, by deed executed before the attesting notary, 160 on the 7th day of August, 1899, the original of which is now before me in my registry.

Third. That the parcel of land is free of encumbrances, and

Fourth. That the property is sold on the following conditions:

1. Isidro Fernandez Sanjurjo y Skerret sells to Francisco del Moral the parcel of land described in the paragraph numbered First of this deed, for one thousand five hundred dollars which he confesses having received.

2. The purchaser shall enter into possession of the property described from the time of the execution of this deed.

3. It is expressly agreed that any lawsuits which may arise as a result of this contract shall be contested in the courts of this city, and

4. Francisco del Moral y Nadal accepts this deed in all its parts.

I advised the parties to this deed: That the general government, the Island and the municipality had a preferred lien for any taxes that might be due and unpaid at the time of the execution of this deed.

That the purchase price having been confessed as received, the

house was free of all encumbrances even should it be proved that the said purchase price was not paid either in whole or in part.

That a copy of this deed should be delivered to the registrar of property in this city so that it be recorded, otherwise there
161 would be no defense against the claims of third parties, neither would it be received in the offices of the government, nor in the courts or tribunals when the object was to make it effective against the rights of third parties in the same, because it is a deed that should be recorded and not one of the cases excepted by the Mortgage Law.

They executed and signed this instrument as it is after I had read it to them in the presence of the witnesses, Carmelo Bascaran and Carlos Doittau, residents of this city, and after I had informed them of their right to read it for themselves, but which right they waived. To all of which I certify Isidro F. Sanjurjo, F. del Moral, C. Bascaran, Carlos Doittau.

(Signed)

ALFREDO ARNALDO.

Agrees exactly with the original deed which under the number 306 is in the registry of public instruments corresponding to the year 1901 in the notarial office formerly of Alfredo Arnaldo, which registry is now in the general archives in my custody.

To which I certify and at the request of the Honorable Attorney General, issue on four sheets of paper this copy which I seal, sign and rubricate at Mayaguez, on the 13th day of July, 1910. Corrections: street—confesses—proved. All valid.

LCDO. MARIANO RIERA PALMER.

(Notarial seal and an excise tax stamp of the value of 50 cents.)

162 *Deed of Sale Executed by Isidro Fernandez Sanjurjo in Favor of Francisco Del Moral y Nadal, November 16, 1901, Mayaguez, Porto Rico.*

Number One Hundred and Twenty-six.

In the city of Mayaguez, November sixteen, one thousand nine hundred and one, before me, Licentiate Jose de Diego y Martinez, Notary of the Notarial Association of Porto Rico, with residence and office in this city, the witnesses hereto being present, appear Isidro Fernandez Sanjurjo y Skerret, property owner, party of the first part, and Francisco del Moral y Nadal, merchant, party of the second part, both being of legal age, married and residents of Mayaguez.

I hereby certify to my knowledge, and to the profession and residence of the parties appearing, who assure me that they are in the enjoyment of their civil rights, they having, in my opinion, the legal capacity necessary to execute the present deed of purchase and sale.

Accordingly, the parties appearing make the following statements:

First. Said Fernandez Sanjurjo is owner of a house lot measuring one thousand one hundred and seventy-seven square meters, situated in barrio "Miradero," of this city; bounded on the south by lands belonging to Genaro and Carmen Cartagena and a street outlined on the same lands and known as Catalina; on the east, by a
 163 parish road leading to Añasco; on the west by river Yaguez, and on the north by lands of Genaro Cartagena.

Second. Said Fernandez Sanjurjo acquired the aforesaid house lot by purchase from Genaro and Carmen Cartagena y Manguai, according to deed authorized by Notary Mariano Riera, April six, one thousand eight hundred and four.

Third. On the land above described said Fernandez Sanjurjo has, subsequently to the purchase, constructed the buildings hereinafter described:

A frame, zinc roofed, single story house, standing on "Coronel Soto" street, "Miradero" ward, at the place called "Paris," this city; bounded in front by said street; in the rear by lands of plantation "Carmen," on the right by a house belonging to Isidro Fernandez Sanjurjo, and on the left by a house lot belonging to Jaffe Brothers.

Another frame, zinc roofed, single house, on aforesaid street, bounded in front by said street, in the rear and on the right by lands of plantation "Carmen," and on the left by the house hereinbefore described.

Each of said buildings measure ten varas front by eighteen deep, and the lot on which they stand, thirty-six varas deep by eleven and three-fourths front.

Fourth. Said Fernandez Sanjurjo retains the absolute dominion of the properties hereinbefore enumerated, which have not been alienated nor encumbered.

And pursuant to agreement, Isidro Fernandez Sanjurjo v Skerret and Francisco del Moral y Nadal, both of their own right execute the following:

Deed.

164 Clause First. Said Fernandez Sanjurjo conveys for a valuable consideration to said del Moral the absolute dominion appertaining to him in the lot and houses described in the third statement hereof; it being understood that the right of ownership carries with it that of possession and of all the natural and civil accessions of the properties alienated.

Second. Both the vendee and vendor engage to abide by the obligations arising from this contract.

Third. The sale is made for the sum of two thousand dollars which Sanjurjo declares having received prior to this act; and I, the Notary, warn him that, the delivery of the purchase money having been acknowledged, the contract shall remain in force, although it be afterwards proven that said delivery was not true.

Fourth. The parties executing the present are entirely satisfied with the stipulations herein contained, and place themselves under the jurisdiction of the insular courts, this city being designated for all the proceedings to which this contract may give rise.

Finally, I, the Notary, made and enter these notifications: 1. The State, the People of Porto Rico, and the Municipality have a legal preferential mortgage on the real properties alienated, for the recovery of taxes under last year's assessment, due and unpaid; 2. A first copy of this deed must be presented at the Registry of property for admission to record, without which requisite it cannot prejudice a third person, nor be admitted against him in courts of justice, councils or the offices of the government.

Thus do they execute and sign the present before the witnesses hereto Carlos Doittau y Ponce de Leon and Carmelo Bascaran Quintero, residents of this city, after I had read the document to
 165 all of them in a single act, and informed them of their right to read it each for himself, which they waived. To all the contents whereof I, the Notary, do hereby certify. Isidro F. Sanjurjo. F. del Moral. C. Bascaran. Carlos Doittau. Signed, Jose de Diego.

The foregoing is a true and faithful transcript of the original deed one hundred and twenty-six, on file with the protocol of public instruments appertaining to the Notarial Office under my charge, for the year one thousand nine hundred and one, to which I refer; and to forward to the Honorable the Attorney General, I issue this copy to which I affix my mark and signature on three typewritten leaves of paper leaving a memorandum thereof, in Mayaguez, this thirteenth day of July, one thousand nine hundred and ten.

[L. s.]

(Signed)

JOSE DE DIEGO.

The examination of the witness JOSÉ DE DIEGO was thereupon continued, and the following colloquy between counsel and Court took place:

Mr. BROWN: I want to ask this question, may it please Your Honor:

Q. In the negotiations and settlement, what became of the estate "Carmen"?

Mr. PETTINGILL: The same objection.

The COURT: Answer the question.

Mr. PETTINGILL: Note an exception.

166 A. It remained as the exclusive property of Don Isidro Sanjurjo.

Mr. BROWN: That is all.

Mr. PETTINGILL: First I move to strike out that answer as expressing an opinion of the witness.

The COURT: Read the question and answer.

(The last question and answer were read for the information of the Court.)

The COURT: There is no expression of opinion there.

Mr. PETTINGILL: Your Honor must appreciate at the same time that unless I make duly my exceptions, I cannot get a ruling from the court above.

The COURT: That is all right.

Mr. PETTINGILL: I want to state as a further ground of that motion to strike, that it appears distinctly from the nature of the answer that it involves confidential communications made between counsel and client which are here disclosed without the consent of the client. Note an exception.

Upon cross-examination, the witness JOSE DE DIEGO testified as follows:

In the negotiations and in the compromise of the suit to which I have referred, whether or not the plantation "Carmen" was in fact in the name of Ysidro Fernandez Sanjurjo, we acted as if the property was in his name. The subject of the litigation was whether the properties which Mr. Sanjurjo had belonged exclusively
167 to his wife or to the conjugal partnership, but they came to an agreement. That agreement was made by the lawyers, and they afterwards notified their clients. I acted by the authority of my client Altagracia Nadal y Freyre. After the lawyer for the other party and myself had agreed upon a compromise, I submitted it to her and received her approbation.

Whereupon counsel for plaintiff, in view of the statement so made on cross-examination by the witness, again moved to strike out his testimony regarding the terms of said compromise as involving confidential communications between attorney and client. Said motion was denied by the Court, to which ruling of the Court counsel for the plaintiff excepted.

Thereupon further to maintain the issues on his part, counsel for the defendant introduced as a witness ISIDRO FERNANDEZ SANJURJO, who being duly sworn, testified as follows:

I do not remember the date of my marriage, but it was a year and a half or two years after the emancipation of the slaves. I got the estate "Carmen" from Rosello in exchange for property which belonged to me. That property was put in at 16,000 pesos provincial currency, and, in addition, I agreed to pay 20,000 pesos provincial currency in installments of \$4,000 per year. That property which I gave in part payment was of my own exclusive ownership. Before the sale to The People of Porto Rico I had paid the money installments all but \$5,000, which the People of Porto Rico paid when it made the purchase. At the time of the settlement between myself and my wife I had paid nothing at all on the plantation "Carmen."

After the expiration of the first year I paid the whole amount
168 except \$5,000 which remained. When the first installment was due I had already separated from my wife. I had paid her and got a general release from her.

From this point the examination of witness and objections thereto were verbatim as follows:

Mr. PETTINGILL: To keep the record straight, I move to strike out the last statement.

The COURT: I am going to let everything in unless it *it* is very bad, and let the Supreme Court have it all up there.

Mr. PETTINGILL: He said he got a release. That can't bind anybody.

The COURT: He is merely stating a fact, that he got what he called a release.

Mr. PETTINGILL: Save an exception.

Q. There is a deed here from Sanjurjo to Philippi dated the 26th of April, 1901.

A. I made a simulated transfer to Philippi—

The witness is interrupted by counsel.

The COURT: Strike that out.

Q. I will ask you if Philippi paid you anything for that property.

Mr. PETTINGILL: I object to that.

The COURT: Is that deed in evidence?

Mr. BROWN: Yes, sir; but he comes and says that the property was acquired in 1902 to get this side of the Act of the Legislature.

Now I am going to show that he acquired it before.

169 Mr. PETTINGILL: Now we have got up to the equitable defense; this evidence that deeds which on their face show one thing mean another. That can be done in equity but not in law.

The COURT: I don't attach any importance to this theory or branch of the case, yet I can see how the defendant might deem it important, and if that is a fact it ought to be proven now that while the title to this property was in some one else, that all of the time it was his property, and you could not prove it in any other way.

Mr. PETTINGILL: And our contention is that in a suit at law it cannot be proved at all. Note an exception. My objection goes through all of this, to save interruptions.

Q. Did Philippi pay anything for this property?

A. No, sir.

Q. Did he expect to pay you anything for the property?

A. Nothing.

Q. I see that Philippi conveyed this property to Rosa, Dolores and Elisa Garcia Sanjurjo on the 11th of November, 1901.

A. On my instructions he did that.

Q. Did *he* ask Philippi to convey the property to these nieces of his?

A. I ordered him to do it.

Q. There is a deed on record dated the 19th of April, 1902, from Dolores, Elisa and Rosa Garcia to the witness.

A. Yes, sir; because I was about to sell it to the People of Porto Rico and the transaction was not carried out I then transferred it back to her.

170

Q. Did they pay you anything for the property?

A. Not a cent.

Q. I will ask you whether or not from the time you acquired the property on the 25th of October, 1900, to the time the property was

deeded to the People of Porto Rico you were the owner of the property?

Mr. PETTINGILL: Note an objection and an exception.

A. Yes, sir; and I was the manager thereof.

Q. Did the People of Porto Rico pay the entire consideration agreed to be paid for this property?

A. It did; everything; it was deposited with the firm of Lundt, a bank in Mayaguez.

Q. I will ask you if at the time you sold there was a mortgage on the property which you had not paid, for \$5,600.00 which the People of Porto Rico paid?

A. Yes, sir; they were deposited at that place because that payment had not yet fallen due.

Q. And that was a part of the price he originally agreed to pay Rosello?

A. No, that was the People of Porto Rico with me.

Q. What I am asking is this: if the mortgage is part of what he agreed to pay Rosello and coming down through the various conveyances.

A. Yes, sir; that was the portion I remained owing.

Q. Now do you remember how much taxes there were on the property at the time the People bought?

A. Not one cent; it all had been paid.

171 Upon cross-examination, said witness testified as follows:

The property that I gave in part exchange for the plantation "Carmen" was one which I had acquired many years ago. I don't remember the exact number of acres, but about a hundred and odd. Afterwards I enlarged it up to four hundred and fifty acres. That was in Las Piedras on the other end of the Island—The Eastern end. I had a fine horse breeding establishment there and a cattle range. Rosello did not continue to hold it. He sold it immediately very cheap. It was sold shortly afterwards through me for 60,000 pesos. I gave Rosello a deed executed before the Notary Arnaldo here in Mayaguez. It was not executed at the time Rosello deeded me the plantation "Carmen," but afterwards during the year that I was at "Carmen." I had owned it many years and had paid one hundred and odd thousand pesos for it, including the work I did on it. I cannot state who I bought it from, because it was from at least two hundred people. The cost of it to me was very cheap. The price for land there was sixteen pesos an acre, but in order to buy out some of the squatters I had to pay double the price. I remember that on the 3rd day of May, 1881, while I was in Humacao or Las Piedras I received 10,000 pesos of my wife's money. I did not invest that money in the property I have been speaking of. I borrowed that from her and invested it so as to increase it. Afterwards for the 10,000 pesos I returned her \$11,000. At the time I was married I had already purchased the first portion of one hundred and odd acres. When I came to live here in Mayaguez my wife's family tried to get away her capital from me so as to manage it themselves. But I had capital too—perhaps more than she had. I did not need her money to live. I allowed

her \$100. Besides this property I have referred to I had cash and cattle—so many cattle I could not count them. Some years I cleared \$10,000.

Thereupon counsel for plaintiff asked of the witness the question, "Have you still that capital"?, to which counsel for the defendant objected on the ground that that had nothing to do with the case and was not cross-examination. Said objection was sustained by the Court, to which ruling of the Court counsel for the plaintiff excepted.

Thereupon further to maintain the issues on his part, counsel for the defendant produced as a witness ALFREDO ARNALDO, who being duly sworn, testified as follows:

I am a lawyer by profession, and in the suit in the Insular District Court between Ysidro Fernandez Sanjurjo and his wife I represent the defendant Sanjurjo. At the time of the settlement of that suit there were two mortgages on the plantation "Carmen". The first mortgage in favor of Josea Augustin Cartagena, and a second in favor of said Ysidro Fernandez Sanjurjo. The two mortgages together amounted to from 24,000 to 28,000 pesos. This second mortgage was paid when Sanjurjo purchased said plantation by confusion of rights, as it then appeared that he was both the owner and the holder of the mortgage. The other mortgage, in favor of Cartagena, was paid off by the People of Porto Rico. In other words, Sanjurjo paid off the first mortgage out of the purchase price paid by the People of Porto Rico when the latter bought. In regards to this, I wish to explain. There was a mortgage for 8,000 173 pesos on that property in favor of Cartagena. Sanjurjo bought that property with that mortgage on it. He sold the property to Philippi. Philippi paid no consideration at all, but he just put a mortgage on the property in favor of Sanjurjo. The mortgage of Philippi was cancelled when Sanjurjo again purchased the property, and the Cartagena mortgage was paid off upon the sale of the property to the People of Porto Rico. At the time of the settlement I am not sure whether the plantation "Carmen" was in the name of the nieces of Sanjurjo or in the name of Philippi.

Thereupon counsel for defendant asked the witness the following question:

Q. When you made the settlement, what property was given to the wife and what was deeded to the wife or deeded to any one for her benefit?"

To which question counsel for plaintiff objected on the following grounds: First, that counsel for defendant had already introduced in evidence a notarial instrument showing that the terms of said compromise were in writing, and no oral evidence thereof would be admissible; and, second, that the matter inquired about and sought to be proven was not within any of the issues made by the pleadings.

These objections were overruled by the Court, to which ruling of the Court counsel for plaintiff excepted.

The witness thereupon answered said question and proceeded to testify as follows:

There was a mortgage of \$5,000 upon a plantation called "Margarita", which was put in the name of Francisco del Moral, and also seven urban properties situated in San Jose Street of 174 Mayaguez, and there remained in her name a house on Mirasol Street. And finally there was a legal mortgage of \$6,000 upon the plantation "Fortuna" belonging to Sanjurjo. Sanjurjo kept the plantation "Carmen," a mortgage on the plantation "Ivitado," and the plantation "Fortuna," which was mortgaged to his wife.

Thereupon counsel for the defendant asked the witness the following question:

"Q. Was or not the plantation 'Carmen' to remain the exclusive property of Sanjurjo?"

To which question counsel for plaintiff objected on the same ground stated *as* the objection to a like question heretofore asked the witness Diego. This objection was overruled by the Court, to which ruling of the Court counsel for plaintiff excepted.

Thereupon the witness answered said question as follows:

"Entirely". Yes, sir, absolutely."

Witness then proceeded to testify that the wife of Sanjurjo had lived in Mayaguez from the time of the settlement referred to up to the time of her death, and that the plantation "Carmen" was close to Mayaguez in its outskirts.

Thereupon further to maintain the issues on his part, counsel for defendant produced as a witness in his own behalf DAVID W. MAY, the defendant, who being duly sworn, testified as follows:

I am in charge of the Agricultural Station at Mayaguez, which occupies the plantation known as "Carmen," and have been in charge in that station since May, 1904. I am employed by the 175 United States Department of Agriculture, but the Department occupies it under an arrangement with the People of Porto Rico, so that the possession of the property is really in the People of Porto Rico, and has been ever since I went there. From the time the plantation "Carmen" was purchased by the People of Porto Rico, and occupied by the Department of Agriculture, the improvements or betterments made on the property have cost about \$25,000.

Thereupon further to maintain the issues on his part, counsel for defendant offered in evidence a certified copy of the record in a suit brought by the plaintiff in the present suit, Rafael Martinez Nadal, against the present defendant, Sanjurjo, together with his nieces Rosa, Elisa and Dolores Garcia Sanjurjo, Francisco del Moral and Pedro Rosello for the annulment of certain written instruments, counsel stating that he introduced said record for the purpose of showing allegations therein made by the present plaintiff as admissions against his interest. To the introduction of said record in evidence counsel for plaintiff objected on the ground that the pur-

pose of said suit had no relation to the matters in controversy in the present suit; that the suit contained in said record was brought to the purpose of recovering certain property of which Francisco del Moral, one of the defendants therein, held the title, and that Ysidro Fernandez Sanjurjo, the defendant in the present suit, was merely a formal party. This objection was overruled by the Court, to which ruling of the Court counsel for the plaintiff excepted.

Said record was in the Spanish language, and the only parts thereof referred to the matters alleged by counsel for defendant to be admissions against the interest of plaintiff were contained in the complaint and the order showing the dismissal of said cause on demurrer, a true translation of which portions into the English language is in words and figures following to-wit:

177 District Court of the Judicial District of Mayaguez, Porto Rico.

No. 1725.

RAFAEL MARTINEZ NADAL, Plaintiff,

vs.

ISIDRO FERNANDEZ SANJURJO SKERRETT, ROSA, ELISA AND DOLORES GARCIA SANJURJO, FRANCISCO DEL MORAL Y NADAL AND PEDRO ROSELLO, Defendants.

Annulment of Certain Written Instruments and Other Matters.

The plaintiff, by the lawyers subscribing, appears before the Court in the above entitled action, and says:

First. The plaintiff is the heir and testamentary executor of Altagracia Nadal by virtue of the testament executed by the said Altagracia Nadal, and by virtue of having succeeded to a part of the hereditary rights which by the said testament were granted to Salvador and Ramon Nadal y Freyre, Jose Eugenio, Eugenio Baldomero, Carlos and Antonio Santos Nadal Garnier, Estebania Nadal Martinez and Pedro E. Ramirez.

Second. The defendant Isidro Sanjurjo and Altagracia Nadal y Freyre, were married on the 23rd day of October, 1874, and neither of them brought to the marriage property of any kind.

Third. On the 25th of April, 1881, according to an instrument executed in Humacao, Esteban Nadal y Gros and Micaela Freyre, father and mother of Altagracia, gave her as an advancement, the sum of ten thousand pesos Mexican money, which Altagracia received with the consent of her husband, the defendant Sanjurjo.

178 Fourth. Later, Altagracia Nadal received by inheritance of her aforesaid parents a capital amounting to 121,196 pesos, 96 cents and 5 centimes Mexican money, which represents to-day the sum of \$72,718.18, omitting a small fraction. According to the settlement made at the death of the aforesaid predecessors in interest

and set out in an instrument dated the 27th day of June, 1892, which is in the notarial office of Rosendo Matienzo Cintron, there was adjudicated to Mrs. Nadal de Fernandez Sanjurjo, in settlement of her hereditary rights, the following property:

(Here follows copy of the schedule of property inherited by Altagracia Nadal y Freyre from her parents, which is the same as that already introduced in evidence by plaintiff.)

The description of the property mentioned is set forth in the general inventory of the aforesaid testamentary settlement.

Fifth. The \$78,418.18 which are contained in the preceding paragraph, Altagracia brought to the marriage paraphernal property in her own right, revertable to her sole control at the dissolution of the marriage.

Sixth. Of the property brought to the marriage by Altagracia they were alienated by her with the approval and consent of her husband Isidro F. Sanjurjo, the undivided interests in the sugar warehouse situated in Comercio Street, the warehouse situated in the same street and the house No. 74 Mendez Vigo street in the said city of Mayaguez by deeds executed on the 30th of March, 1894; the two properties first mentioned to Dolores and Estebania Nadal, and the last to Dolores Nadal Freyre. The rest of the property which
179 constituted the inheritance of Altagracia Nadal was transferred by her husband Isidro Fernandez Sanjurjo in his capacity as legal administrator of the conjugal partnership.

Seventh. With the products of the sales of the exclusive property of Altagracia sold as before set forth, the defendant Isidro acquired among other property the following:

(a). A parcel of land containing fifteen cuerdas which was what remained of the plantation "Carmen" in the barrio Miradero at a place called Paris, in Mayaguez, bounded on the north with lands of the plantation "Carmen," on the south by a street recently opened on the west by a road which divides the barrio Paris and the buildings of the "Carmen" plantation. (On the east by lands of the agricultural station.)

(b). A \$4,000 mortgage paying 12% interest annually. Pedro Rosello and his wife Matilde are the mortgagors, and the mortgage is given on two farms, namely, one in the barrio Furnias at a spot called Capay or Mucaradones of "Las Marias" composed of fifty cuerdas, the description of which is in the first record of the same in the registry of property in Mayaguez, at Fol. 135, of Liber 16 of "Las Marias," property No. 689, and another in the same barrio and district of 80 1/2 cuerdas, which is bounded on the north by the Mucaradones River, which separates it from the plantation "Constancia;" on the south by the farm of Manuel Monsegur, and a local road; on the east by the plantation Hortencia, and with Adolfo Hau; and on the west by a farm of the aforementioned Monsegur.

(c). A promissory note for \$2200 subscribed by the defendant Pedro Rosello in favor of Elisa Garcia Sanjurjo, one of the defendants in the present action.

(d). Another promissory note signed by the aforesaid Rosello in favor of the aforesaid Elisa Garcia Sanjurjo, for the sum of \$500.

(e). A parcel of land situated at the prolongation of San Jose Street in the city of Mayaguez, and which street is known as Eleventh of August. This parcel of land measures \$1047. I mean square meters, 68 centimeters and 99 millimeters and is bounded on the south by San Jose street; on the east by the yard of the house of Guillermo Serda; on the north by a parcel of land of Alfredo Cristi and the yard of the house of Alberto Paxot; and on the west by a parcel of land of Eduardo Rivera.

On this land the defendant Sanjurjo built with a part of the capital of his wife three one-story houses of masonry with zinc roofs and balconies of iron, each one having a frontage of 10 meters 180 and a depth of 17 1/2 meters.

(f). Another parcel of land situated in the same street as the former, with a frontage of 39 meters and a depth of 20 meters, bounded in front by the aforesaid San Jose street, now called Eleventh of August; on the east by lands of Alfredo Cristi; on the south by lands of the plantation "Carmelita;" and on the west also by lands of said plantation at a distance of one meter from the group of mango trees on said lands.

On this land the defendant Sanjurjo also with the capital of his wife built three one-story houses of masonry, roofed with zinc and with iron balconies, each one having a frontage 12 meters and a depth of 14; two of them connected by a dividing wall, and the third one separated from the other two by an alley. •

(g). Another lot situated in the same street as the former ones, which has a frontage of nine varas and a depth of 24 varas, and is bounded on the north by the aforesaid San Jose street; on the south by the other lands of Alfredo Cristi; on the east by a parcel of land belonging to Juan Sojo; and on the west with a house and lot of Isidro Sanjurjo.

On this land Sanjurjo built with his wife's money a one-story masonry house with iron balcony, having a frontage of six meters and a depth of 16.

(h). And lastly a parcel of land in Rosa street in the city of Mayaguez, bounded on the north by the said Rosa street; on the west by The Gardens; on the east by the estate of Garcia de la Torre; and on the south by a house of the Mestre estate.

(i). A row of wooden huts situated on lands of the plantation "Carmen" in a place called Paris of the barrio Miradero in the city of Mayaguez.

The property described under the letter A was acquired as aforesaid with money belonging exclusively to Altagracia Nadal; but the defendant, Isidro Fernandez Sanjurjo, acting fraudulently and in bad faith transferred the title to said real property to his nieces Rosa,

Elisa and Dolores Garcia Sanjurjo, in whose names the 181 property is now recorded in the registry of property at Vol. 70, Property No. 2350, Inscription 6-A, and the plaintiff

alleges that the said Dolores, Elisa and Rosa Sanjurjo, have always been penniless, and they allowed their names to be used in the deed as the result of a conspiracy with their Uncle Isidro to defraud Altagracia Nadal of her rights.

The credits shown under the letter- (B), (C), and (D) were also acquired with money belonging exclusively to the capital of Altagracia, which money the defendant Isidro personally gave to the debtor Pedro Rosello; notwithstanding which, and with the intent to defraud Altagracia Nadal y Freyre of her rights, the said Isidro had the defendant Rosello make the deeds in the name of Elisa Garcia Sanjurjo, who is also a defendant in this action.

The lands and houses described under the letters (E), (F), (G), (H), and (I) were also bought and built by the defendant Isidro Fernandez Sanjurjo with the product of the sale of the paraphernal property of Altagracia Nadal. The said properties being in the name of the said Isidro. Because of grave differences between the husband and wife, the latter filed a complaint through her lawyer de Diego to compel her husband to account for the product of the property alienated by him, as a result of which complaint a temporary arrangement was entered into between the two with the advice and counsel of the lawyers for both parties litigant, by which arrangement the defendant Fernandez Sanjurjo acknowledged a debt in favor of his wife of \$5,000, and agreed to turn over to her the seven houses hereinbefore mentioned. But Mrs. Nadal, fearful that her husband would retake possession of the said houses, and fail to keep his agreement, resolved on counsel of her lawyer and by agreement with the adverse party, that Sanjurjo should transfer the said real property to Francisco del Moral, a nephew of Altagracia and a person in whom she had absolute confidence. Moral, when he assumed this fiduciary position, paid no part whatever of the price which in the instruments executed Isidro Fernandez Sanjurjo confessed having received.

Eighth. Up to the moment of her death Altagracia Nadal received the rents and products of the houses and parcels of lands hereinbefore described and transferred by Isidro Fernandez Sanjurjo to Francisco del Moral, but the latter, after the death of Altagracia, and violating the absolute confidence in him reposed, is attempting to hold as valid and efficacious the feigned title executed in his favor, and refuses to turn over to the plaintiff the real properties which by said means he appears to have acquired.

The defendant Isidro Fernandez Sanjurjo and his nieces Elisa, Rosa and Dolores Garcia Sanjurjo also refuse to admit as true the facts hereinbefore set forth, and insist in sustaining the validity of the dishonest, fraudulent and feigned transactions which took place between them in the matter of the properties in this complaint, in spite of the demands of the plaintiff to have said properties included in the inventory of the testamentary property and rights at the death of Altagracia Nadal with the end in view of liquidating her inheritance in accordance with the law and the testament of the aforementioned Altagracia Nadal, who died in the city of Mayaguez on the sixth of July, 1906.

Therefore the plaintiff prays that the court give judgment in favor and declare:

First. That the deeds executed by Isidro Fernandez Sanjurjo in favor of Francisco del Moral transferring to him the properties

shown in this complaint under the letters (E) to (I), be declared null and void.

Second. That the deed in which the defendant Isidro Fernandez Sanjurjo appears transferring to his nieces the property described under the letter (A), be also declared null and void.

Third. That the credits indicated under the letters (B), (C), and (D) pertain to the capital inherited from Altagracia Nadal y Freyre.

Fourth. That all the property described in the body of this complaint be turned over to the plaintiff in his capacity as testamentary executor or to the judicial administrator whom the court may appoint to make the distribution and adjudication of the property left by Altagracia Nadal y Freyre and

Fifth. That the defendants pay the costs and expenses of this suit.

San Juan for Mayaguez, January 31, 1908.

Order.

The demurrer presented by the defendants having been sustained and the court having given the plaintiff the period of ten days in which to amend his complaint without his having done so, and on the motion of the defendant this action is dismissed, and the secretary

184 is hereby ordered to issue orders in duplicate to the registrar of property in this district that he cancel any notice whatever which may have been recorded in the registry as a result of the complaint, and it is also ordered that the papers in this action be permanently filed away in the secretary's office.

Mayaguez, Porto Rico, April 28, 1908.

(Signed)

ISIDRO SOTO NUSSA,
Judge of the District Court.

Thereupon further to maintain the issues on his part, counsel for the defendant offered in evidence a deed executed by Altagracia Nadal y Freyre to Francisco del Moral, dated the 21st day of December, 1901, counsel for defendant stating that he introduced it because it recited that the grantor appeared under the authorization conferred upon her by her husband under the power executed by him and hereinbefore introduced in evidence, and for the purpose of showing that she acted as a single woman in carrying out the settlement and agreement made between her and her husband, to the introduction of which document in evidence counsel for plaintiff objected on the ground that it was not material or relevant to any of the issues in said cause. This objection was overruled by the Court, to which ruling of the Court counsel for plaintiff excepted.

Said document was thereupon admitted in evidence, and was in the Spanish language, a true translation of which into the English language is in words and figures following, to-wit:

- 185 *Deed of Sale Executed by Altagracia Nadal y Freyre in Favor of Francisco del Moral y Nadal, December 21, 1901, Mayaguez, Porto Rico.*

Number One Hundred and Thirty-nine.

In the city of Mayaguez, December twenty-one, A. D., one thousand nine hundred and one, before me Licentiate Jose de Diego y Martinez, Notary of the Association of Porto Rico, with residence and office in this city, the witnesses hereto being present.

Appear Altagracia Nadal y Freyre, property owner, party of the first part; and Francisco del Moral y Nadal, merchant, party of the second part, both being of legal age, married and residents of Mayaguez.

The party of the first part, Altagracia Nadal, appears with the authorization conferred upon her by her husband, Isidro Fernandez Sanjurjo y Skerret in deed executed before the under-signed Notary November 16, last, from which it appears that she has sufficient power to execute the present deed.

I certify to my knowledge of the parties and their profession and residence; they assure me that they are in full enjoyment of their civil rights, and, in my opinion, have the necessary legal capacity to execute the present deed of purchase and sale.

Wherefore, the parties appearing set forth the following facts:

186 First. The party of the first part, Altagracia Nadal, is owner of a two-story masonry house, with iron balcony, situated on Mirasol street, this city, the number of which house is fifty-six; it has seventeen meters and ten centimeters of frontage on said street, and is twelve meters and ninety centimeters deep; in the rear it has a wing, fifteen meters and fifty centimeters long, by seven meters and eighty-seven centimeters wide, and in the yard there is a coach house, seven meters and forty-five centimeters front, by four meters and thirty-five centimeters ten deep; the whole built on a lot measuring seventeen meters and — centimeters on the east, being bounded on that side by Mirasol street; twenty-eight meters and forty centimeters on the north, where it is bounded by property belonging to the Estate of Esteban Nadal; sixteen meters and forty-two centimeters on the west, bounded by a house belonging to Nicolasa Belbe; the thirty-two meters and seventy-five centimeters on the south, where it is bounded by property belonging to the aforesaid Nadal Estate.

Second. Said party of the first part acquired the above described estate by inheritance from her parents Esteban Nadal and Micaela Freyre, according to record in the Registry of property of this district, at folio 248, estate 1010, duplicate, entry 2, volume 15 of this city.

Third. The aforesaid estate is at present incumbered by a mortgage for five hundred dollars in favor of the American Colonial

Bank of Porto Rico; another mortgage credit for the sum of two thousand dollars which had been constituted in favor of aforesaid Bank in a deed authorized by Notary Santiago R. Palmer, September nine, one thousand eight hundred and ninety-nine, having been satisfied.

On the strength of these antecedents, Altagracia Nadal y Freyre, by virtue of the above-mentioned authorization, and Francisco del Moral y Nadal, both in their own right, execute following:

Deed.

Clause First. Mrs. Nadal y Freyre conveys for a valuable consideration to Francisco del Moral y Nadal, the absolute dominion appertaining to her in the real estate described in the first statement hereof; it being understood that the right of ownership carries with it that of possession and of all the natural and civil accessions of the property alienated.

Second. The sale is effected for the sum of eight thousand dollars which Mrs. Nadal acknowledges having received, prior to this act; whereupon I, the Notary, warn her that, the delivery of the purchase money having been acknowledged, the contract shall remain valid, although it be afterwards proven that said delivery had not been made.

Third. The vendee and vendor engage to abide by such legal obligations as may arise from the contract.

Fourth. Both parties express absolute satisfaction with the foregoing clauses, this city being designated for all the proceedings to which this contract may give rise.

Finally, I, the Notary, made and enter the following notifications: 1. The State, the People of Porto Rico and the Municipality have a legal preferential mortgage on the estate conveyed, for the collection of due and unpaid taxes of the last fiscal year; 2. A first
188 copy of this deed must be presented at the Registry of Property for admission to record, without which requisite it cannot prejudice a third person nor be admitted against him in the courts of justice, councils and offices of the government.

Thus have they executed and signed the present deed before the witnesses hereto Mateo de Peña y Santin and Ramon Muñiz y Lopez, residents of this city, after I had read to *to* all the contents thereof and informed them of their right personally to read it, each for himself, which they waived. To all of which I, the authorizing Notary, do hereby certify—Altagracia Nadal y Freyre—F. del Moral—Mateo de Peña—Ramon Muñiz—Signed, Jose de Diego.

The foregoing is a true and faithful transcript of the original deed number one hundred and thirty-nine, on file with the protocol of public instruments of the Notarial Office under my custody, for the year one thousand nine hundred and one, to which I refer; and to forward to the Honorable the Attorney General of Porto Rico, I issue this copy to which I affix my mark and signature on

three leaves of manutyped paper, taking a memorandum thereof, in Mayaguez, this thirteenth day of July, one thousand nine hundred and ten.

[L. s.]

(Signed)

JOSE DE DIEGO.

Dr. Joaquin Servera Silva, Registrar of Property of this city and its mortgage district. I certify that the foregoing instrument, from a copy thereof, was recorded on January 6, 1902, at fol. 170 189 of vol. 37 of this city, property No. 1010, triplicate, fifth inscription. At the request of the Hon. Attorney General in matters concerning the People of Porto Rico, I issue these presents without fee charges at Mayaguez on October 28, 1910.

[SEAL.]

DR. JOAQUIN SERVERA SILVA.

Thereupon counsel for defendant stated that he had no further evidence to offer and closed his case.

Whereupon counsel for plaintiff, in rebuttal of the testimony so introduced by defendant, as aforesaid, produced as a witness in his behalf Salvador Nadal, who being duly sworn testified as follows:

I reside in Mayaguez and am a planter and property owner. Altagracia Nadal y Freyre was my sister, and I have known Ysidro Fernandez Sanjurjo from the time of his marriage to her. That marriage was about thirty years ago, more or less. Our parents were both alive at the time of the marriage. My mother died in 1901 and my father died in 1902, about six months apart. I was Executor of the will of both my father and my mother, and the testamentary division was made as one act. The heirs inherited about 121,000 pesos each. Up to that time I had never known the husband Ysidro Fernandez to have any property or money either. For two years before he was married he was overseer for my father on the plantation "Cuatro Hermanos". I distributed the assets between the different heirs, and in the distribution Altagracia Nadal was represented by her husband, but she signed the receipt. 190 I made all the heirs appear in Court, both men and women, and all of them signed because I wanted to fulfill that formality.

Thereupon counsel for plaintiff asked the witness the following question:

"Q. What became of all the property—121,000 pesos?"

Whereupon the following colloquy between Court and counsel ensued:

MR. BROWN: Now this is something original.

THE COURT: I want to differ with you gentlemen. It is neither original nor rebuttal. It does not make any difference whether he had any property or not. The question is whether he got the property from his wife. He might be as poor as a church mouse.

MR. PETTINGILL: We are admitting that he got it from his wife.

MR. BROWN: No, we are not.

MR. PETTINGILL: Then we will prove it.

MR. BROWN: Well I object.

The Court: The objection is sustained.

Mr. PETTINGILL: Note an exception.

Continuing, the witness stated:

I am acquainted with the seven houses that were deeded by Ysidro Fernandez Sanjurjo in 1901, and I know there value in a general way.

Thereupon counsel for plaintiff asked said witness the following question:

"Q. What, in your judgment, was the value of those houses in the place where they were?"

Whereupon the following colloquy between court and counsel took place:

191 **Mr. BROWN:** I object to that, if your Honor please.

The Court: Mr. Pettingill, if you can show the Court that it has the slightest relevancy or bearing I will admit it.

Mr. PETTINGILL: It may not in the theory that your Honor holds of the case, but I have to present my case. But if your Honor holds it immaterial, then out it will go.

The Court: Then I will sustain the objection and give you an exception so as to get along.

Upon cross-examination of said witness, counsel for the defendant asked the following question:

"Q. Has there ever been, to your knowledge, any liquidation of the community property owned by Sanjurjo and his wife?"

To which question counsel for plaintiff objected on the grounds—first, that it was immaterial; and, second, that any question as to their having had such a liquidation was waived by the pleadings in the cause. Said objection was overruled by the Court, to which ruling of the court counsel for plaintiff excepted.

The witness then stated, in answer to the question, "I think there has been no liquidation between the parties."

Thereupon counsel for plaintiff announced that, under the ruling of the Court as to the materiality and admissibility of the foregoing evidence, he had no further rebuttal to offer.

And the foregoing includes all the material evidence introduced by the parties in the cause.

192 Thereupon the following proceedings took place:

Mr. BROWN: I want to move your Honor to dismiss this suit because the court has no jurisdiction, and to direct a verdict.

The Court: I have tried to take a broad view of this question and I am following your complaint. Now the first question is as to the borrowing of this money. There are questions here, I will state, that should be for the jury. I am going to assume that the complaint is true and that it is proven that the husband got the money of the wife, whether it was by a loan or not, and went and invested that in the property. Now, if he did it, that was not paraphernal property, but it created either a constructive trust or a resulting trust we will say. I won't take time to determine which because it is immaterial, but if he took her money, I am going to assume that there was a trust relation created. I am doing that for the purpose of following the legal title. Of course if that is a fact and the husband

took that property in his own name, the legal title went with it, did it not? There could not be any question about it. Now if there was a trust relation created there, that woman during her life
193 time could have enforced that trust in equity unless he would deed it over to her as demanded. She did not do it. There was an administrator appointed. He looked over the papers and there was no reference to this property. At that time, according to your statements of it, the legal title had passed down to the present defendant, but whether or not that is true, if any trust relation existed, it was for the administrator to enforce it, and if he did not enforce it, it was to my mind lost forever, and that absolutely disposes of the entire case. But you go a little further, and one of the questions that would go to the jury if the case went to the jury at all, would be as to that loan. Now in order to entitle the plaintiff to recover, you have got to find as a matter of fact that the husband did borrow this money or make this investment to her injury, thereby becoming a debtor of the wife. Now unless she had a title and a right, this plaintiff never got it. But of course assuming for the sake of disposing of this motion, that the woman,---I cannot think of her name, but it is immaterial, we will call her the wife,---did have perfect title. This will convey nothing. It would be spending time uselessly talking about that. Therefore on those two grounds the Court is thoroughly satisfied that the plaintiff
194 has no right of action. The legal title is shown to be absolutely in the defendant in this action. I have been unable to find a single element of title in this plaintiff or his ancestor. Now, as the Supreme Court of the United States stated in 152 U. S., 172, where the question is thoroughly discussed, the language of the opinion is: "In an action in ejectment in a Federal court, the legal title prevails." The court is unable to find an element of title in the plaintiff here. I never saw a much better title in my life in any defendant. Now, those are my views, gentlemen, and I have given it a great deal of care and consideration.

Mr. PETTINGILL: Only one result can follow from these views, I take an objection to the views expressed and an exception, and to the charge to bring in a verdict for the defendant.

Thereupon, in accordance with the instruction given by the Court as above indicated, the jury brought in a verdict for the defendant, as duly appears of record.

And forasmuch as the matters above set forth do not fully appear of record in said cause, the plaintiff tendered his bill of exceptions in open court on the 5th day of April, A. D. 1911, the same being a day of the same October Term, 1910, at which said trial was had, and counsel for defendant being present in court, and prayed that the same might be signed and sealed by the Judge and thereby made a part of the record in said cause, in accordance with law.

At the time both of the trial and of said tendering of the bill of exceptions the Hon. John J. Jenkins was judge of this
195 Court, and on the day this bill of exceptions was so tendered as aforesaid the same was not immediately signed but was

taken under consideration in order that counsel for defendant, as well as the court, might examine the same, but within a few days thereafter and before such examination was completed or the proposed bill of exceptions further acted upon said Judge was compelled on account of ill health to adjourn said October Term, 1910, and depart from the District, and has since died without being able to return thereto.

Within a few days after the present incumbent qualified as the successor of said Judge John J. Jenkins and began the discharge of his duties as Judge of this court, came again the counsel for plaintiff and, said bill of exceptions having been amended at the suggestion of counsel for defendant by certain additions made in order to conform it to his wishes, and prayed that said bill of exceptions be now signed and sealed by the present incumbent of the Bench; and no reason appearing to the court why said prayer should not be granted, as counsel for defendant admits that the same accords with the facts, though not desiring to consent to its approval, the same is accordingly signed, sealed and made a part of the record this 15th day of September, A. D. 1911, nunc pro tunc as of said 5th day of April, 1911.

(Signed)

PAUL CHARLTON, *Judge.*

196

Petition for Writ of Error.

(Filed Sept. 25th, 1911.)

197 In the District Court of the United States for Porto Rico.

No. 755, San Juan.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Comes now the plaintiff in the above suit, by his attorney N. B. K. Pettingill, and complains that in the record and proceedings had in said cause, and also in the rendition of the judgment therein in the said District Court of the United States for Porto Rico, at the October Term thereof in the year 1910, against the said plaintiff on the 12th day of December, 1910, manifest error hath happened to the great damage of said plaintiff.

Wherefore the said plaintiff Rafael Martinez Nadal, prays of the allowance of a writ of error to the Honorable, the Supreme Court of the United States, and for such other orders and process as may ease the rulings of said Court herein to be reviewed and corrected by the said Supreme Court of the United States.

And petitioner will ever pray.

(Signed)

N. B. K. PETTINGILL,
Attorney for Plaintiff.

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Bond on Writ of Error.

(Filed September 25, 1911.)

199 In the District Court of the United States for Porto Rico.

(Filed September 25th, 1911.)

No. 755, Law, San Juan.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Bond on Writ of Error.

Know all men by these presents that we, N. B. K. Pettingill, attorney for plaintiff, as principal, and Francisco del Moral and Tomás Boothby, as sureties, are held and firmly bound unto David W. May, the defendant, in the penal sum of Three Hundred Dollars (\$300), for the payment whereof well and truly to be made to said David W. May, his heirs, executors, administrators or assigns, we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 25th day of September, 1911.

Whereas lately at a session of the District Court of the United States for Porto Rico a final judgment was rendered in the above entitled cause on the 12th day of December, 1910, against said plaintiff Rafael Martinez Nadal, and the latter having obtained the allowance of a writ of error to reverse said judgment and a citation directed to said defendant citing and admonishing him to be and appear at a Supreme Court of the United States at Washington, within sixty days from the date thereof;

Now, therefore, the condition of the above obligation is such, that if the said Rafael Martinez Nadal shall prosecute said writ of error to effect and shall answer all costs, if he fails to make his plea good, then the above obligation shall be void, else shall remain in full force and virtue.

	(Signed)	N. B. K. PETTINGILL,	[SEAL.]
[SEAL.]	"	F. DEL MORAL.	[SEAL.]
	"	T. BOOTHBY.	[SEAL.]

Approved, this 25th day of September, 1911.

(Signed) PAUL CHARLTON, *Judge.*

201

Assignment of Errors.

(Filed September 25th, 1911.)

202 In the District Court of the United States for Porto Rico.

No. 755, San Juan.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Comes the plaintiff, now plaintiff in error, and assigns the following as the errors committed by this trial court in the proceedings and trial in the above entitled cause:

I.

The court erred in overruling the demurrer filed by plaintiff on September 1, 1910, to the affirmative defence interposed by the amended answer of the defendant.

II.

The court erred in holding that a translation of a document, introduced in evidence in a foreign language, made by its official interpreter was irrefutable, and in refusing to determine judicially for itself the correct translation and meaning of a clause or sentence of said document, whose true meaning in the English language was in dispute between the parties.

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III.

The court erred in accepting the following translation into English, to wit:

"I also bequeath to my nephew Rafael Martinez Nadal the legal mortgage executed by my husband in my favor upon the cattle ranch situated in Guanajibo of Cabo Rojo, in case the assignment which I made of the said mortgage in favor of my nephew aforesaid, Rafael Martinez y Nadal, shall not have become effective, all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband."

as a correct translation of the following sentence in the Spanish language, to wit:

"Lego también á mi sobrino Rafael Martinez y Nadal, la hipoteca legal otorgado por mi esposo a mi favor sobre una finca de crianza sito en Guanajibo de Cabo-Rojo, caso de que no hubiese surtido efecto la cesión que ante Notario hice de dicha hipoteca á favor de mi ameritado sobrino Rafael Martinez y Nadal, todos los derechos y

acciones que puedan caberme en los bienes míos que estén á nombre de mi esposo Isidro Fernandez Sanjurjo, en virtud de la transacción celebrada con mi dicho esposo."

IV.

The court erred in sustaining the objection interposed by defendant to the following question propounded by plaintiff to his witness, Francisco del Moral;

"Do you know, from statements made by Isidro Fernandez Sanjurjo to you, whether or not he had any property at the time of his marriage to your aunt"?

whereby plaintiff expected to prove that said Sanjurjo had no property at that time, which was a fact material to the issues.

V.

The court erred in overruling the objection of plaintiff to the admission in evidence on behalf of defendant of a deed of 204 conveyance for the property in controversy from Pedro Rosello Irizarry to said Isidro Fernandez Sanjurjo, dated October 25, 1900, and admitted as defendant's Exhibit No. 1.

VI.

The court erred in overruling the objection of plaintiff to the admission of a similar deed for the same property from said Isidro Fernandez Sanjurjo to Federico Phillippi, dated April 26, 1901, and admitted against said objection.

VII.

The court erred in overruling the objection of plaintiff to the admission of a similar deed for the same property from said Federico Phillippi to Rosa, Dolores and Elisa Garcia Sanjurjo, dated November 11, 1901, and admitted against said objection.

—VIII.

The court erred in overruling the objection of the plaintiff to the admission of a similar deed for the same property from said Rosa, Dolores and Elisa Garcia Sanjurjo — said Isidro Fernandez Sanjurjo, dated April 19, 1902, and admitted against said objection.

IX.

The court erred in overruling the objection of plaintiff to the admission in evidence on behalf of defendant of the certified transcript of a suit between Atagracia Nadal y Freyre and said Isidro Fernandez Sanjurjo in the District Court of Mayaguez, Porto Rico, which was admitted against said objection as defendant's Exhibit No. 1-A.

X.

The court erred in overruling the objection of plaintiff to the admission in evidence on behalf of defendant of a Notarial agreement entered into between the parties last named, 205 Altagracia Nadal y Freyre and Isidro Fernandez Sanjurjo, dated November 16, 1901, and admitted against said objection.

XI.

The court erred in overruling the objection of plaintiff to the admission in evidence on behalf of defendant of another Notarial document of even date with the above and between the same parties, whereby said Isidro Fernandez Sanjurjo executed in favor of his wife, Altagracia Nadal y Freyre a legal mortgage for the sum of \$5,000.

XII.

The court erred in permitting one José de Diego, a witness for defendant, to testify over the objection of the plaintiff to the terms of the compromise represented by the Notarial agreement of November 16, 1901, above referred to, between said Altagracia Nadal Y Freyre and Isidro Fernandez Sanjurjo.

XIII.

The court erred in overruling the objection of plaintiff to the admission in evidence on behalf of defendant of the three deeds from Isidro Fernandez Sanjurjo to Francisco del Moral y Nadal, dated November 16, 1901, and admitted against said objection.

XIV.

The court erred in overruling the objection of plaintiff to the following question propounded by defendant to said witness José de Diego:

"In the negotiations and settlements, what became of the estate 'Carmen'?"

206 to which said witness answered that it remained the exclusive property of Isidro Fernandez Sanjurjo.

XV.

The court erred in denying plaintiff's motions to strike said answer to the question quoted in the last assignment of error.

XVI.

The court erred in denying plaintiff's motion, made after the cross-examination of said witness José de Diego, to strike out all his testimony regarding the terms of the same compromise above referred to as involving confidential communications between counsel and client.

XVII.

The court erred in denying plaintiff's motion to strike from the testimony of Isidro Fernandez Sanjurjo, a witness for the defendant, the statement that before paying the first installment of the purchase price of the estate "Carmen," he had obtained a general release from his wife.

XVIII.

The court erred in overruling the objections of Plaintiff to the questions propounded on behalf of the defendant to said Isidro Fernandez Sanjurjo, one of his witnesses, in answer to which said witness testified in substance that from the time he acquired the estate "Carmen" in October, 1900, to the time it was deeded to "The People of Porto Rico" he continued to be the real owner of it, and that the various conveyances made meantime, as shown by the deeds which had been introduced in evidence, were simulated and without consideration.

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XIX.

The court erred in sustaining the objection of defendant to the question "Have you still that capital?" propounded by plaintiff on cross-examination to said Isidro Fernandez Sanjurjo, a witness for defendant; whereby plaintiff was prevented from properly testing the veracity of said witness.

XX.

The court erred in overruling the objection of plaintiff to the following questions propounded by defendant to his witness Alfredo Arnaldo:

"When you made the settlement, what property was given to the wife and what was deeded to the wife or deeded to any one for her benefit?"

and

"Was or not the plantation, 'Carmen' to remain the exclusive property of Sanjurjo?"

the witness answering the first by enumerating certain properties and the second in the affirmative.

XXI.

The court erred in sustaining the objection interposed by defendant to the following question propounded by plaintiff to Salvador Nadal, a witness called by him in rebuttal:

"What became of all the property—121,000 pesos?"

plaintiff expecting to prove by said witness that said Isidro Fernandez Sanjurjo, the husband, had received and invested it all.

XXII.

The court erred in overruling the objection of plaintiff to the question propounded on behalf of defendant on the cross-examination of said witness Salvador Nadal, as follows:

"Has there ever been, to your knowledge, any liquidation of the community property owned by Sanjurjo and his wife?"

to which witness was allowed to reply "I think there has been no liquidation between the parties."

XXIII.

The court erred in holding and in instructing the jury that no right in the property in controversy passed to the plaintiff under the last will and testament of Altagracia Nadal y Freyre.

XXIV.

The court erred in instructing the jury to bring in a verdict, for the defendant.

Wherefore plaintiff in error prays that the judgment in said cause may be reversed and a new trial be granted.

(Signed)

N. B. K. PETTINGILL,
Attorney for Plaintiff in Error.

In the District Court of the United States for Porto Rico,

No. 755.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

I, Rafael Guillermet, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing typewritten pages numbered from 1 to 208, inclusive, to be a true and correct copy of certain proceedings in the above-entitled cause, as the same remain of record and on file in my office, as called for by the præcipe filed by counsel for the appellant, copy of which præcipe is attached hereto.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of November, A. D. 1911.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMET,
Clerk U. S. Dist. Court for P. R.

210

Writ of Error.

211

In the District Court of the United States for Porto Rico,

No. 755, San Juan.

RAFAEL MARTINEZ NADAL

vs.

DAVID W. MAY.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of the United States for Porto Rico, before you, between Rafael Martinez Nadal, plaintiff, and David W. May, defendant, manifest error hath happened to the great damage of the plaintiff, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington within sixty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and

212 according to the laws and customs of the United States ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, and the seal of this Court at San Juan, Porto Rico, this 25th day of September, in the year of our Lord one thousand nine hundred and eleven.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY,

Clerk District Court of the United States for Porto Rico.

Allowed, this 25 day of September, 1911.

PAUL CHARLTON, *Judge.*

I hereby certify that a certified copy of the foregoing writ has been lodged in my office for the defendant in error, this 26th day of September, 1911.

RAFAEL GUILLERMETY, *Clerk.*

[Endorsed:] U. S. District Ct. for P. R. Rafael Martinez Nadal vs. D. W. May. Writ of Error.

213

Citation.

214 In the District Court of the United States for Porto Rico.

No. —, San Juan.

RAFAEL MARTINEZ NADAL
vs.
DAVID W. MAY.

To David W. May, defendant in the above suit, and Foster V. Brown, Attorney General of Porto Rico, your Attorney of Record:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, within sixty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of said District Court of the United States for Porto Rico, wherein Rafael Martinez Nadal is plaintiff in error and you, the said David W. May, are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Paul Charlton, Judge of the court aforesaid, this 25 day of September, A. D. 1911.

[Seal United States District Court for the District of Porto Rico.]

PAUL CHARLTON,
Judge District Court of the United States for Porto Rico.

Service of the foregoing citation accepted, with copy, at San Juan, this 25 day of September, 1911.

FOSTER V. BROWN,
Attorney General of Porto Rico,
Counsel of Record for Defendant.

[Endorsed:] U. S. District Ct. for P. R. Rafael Martinez Nadal vs. D. W. May. Citation.

[Endorsed:] No. 755 Law. In the District Court of the United States for Porto Rico. Rafael Martinez Nadal, vs. David W. May. Record on Appeal.

Endorsed on cover: File No. 22,940. Porto Rico D. C. U. S. Term No. 130. Rafael Martinez Nadal, plaintiff in error, vs. David W. May. Filed November 21st, 1911. File No. 22,940.



U. S. Supreme Court, U. S.
FILED
DEC 9 1913
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 130.

RAFAEL MARTINEZ NADAL, PLAINTIFF IN ERROR,

vs.

DAVID W. MAY.

BRIEF FOR PLAINTIFF IN ERROR.

N. B. K. PETTINGILL,
F. L. CORNWELL,
Attorneys for Plaintiff in Error.

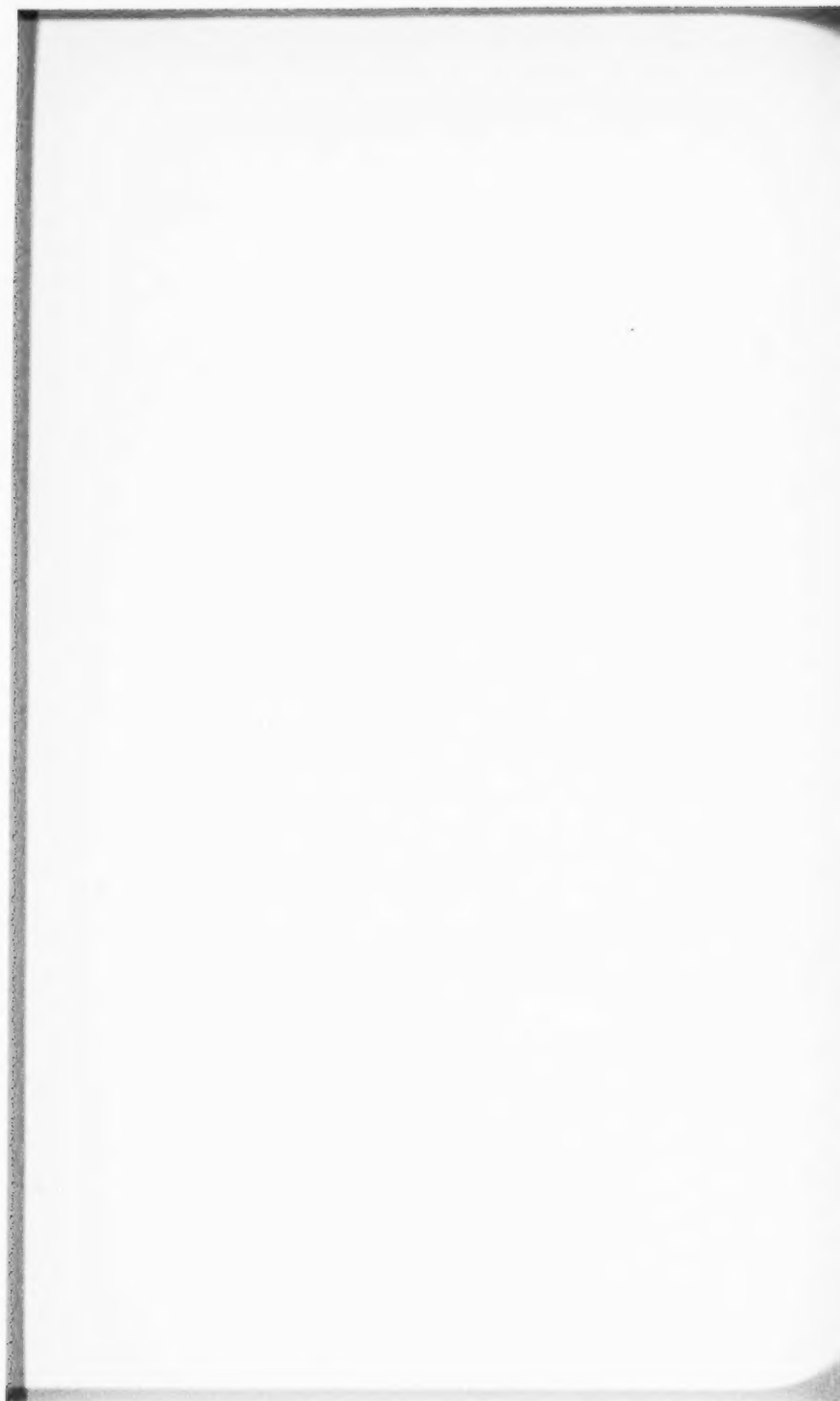


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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 130.

¹ RAFAEL MARTINEZ NADAL, PLAINTIFF IN ERROR,

vs.

DAVID W. MAY.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

The plaintiff in error here was also the plaintiff below in a Code action similar in character to an action of ejectment (Code of Civil Procedure of Porto Rico of 1904, secs. 282-5), brought in the District Court of the United States for Porto Rico, for the recovery of an undivided one-half interest in certain land described in the complaint, together with mesne profits for the detention of the same at the rate of \$2,500 per year, which at the time the suit was begun amounted to more than \$5,000, and at the time of trial to more than \$10,000.

The complaint (printed Record, pp. 1-5) alleged the necessary citizenship and amount to give jurisdiction (Royal Insurance Co. *vs.* Martin, 192 U. S., 149), and claimed title

to the undivided one-half interest referred to as a result of the following facts: That said property had been purchased by one Isidro Fernandez Sanjurjo during his marriage with Altagracia Nadal and title taken in the name of the former, although the purchase had been made with the separate property of the latter, his wife, whereby it became the common property of the conjugal partnership—that is, community property; that said husband Sanjurjo executed a conveyance of the whole property during the continuance of said partnership without the wife joining in the conveyance or in any way giving her consent thereto; that thereafter and prior to the beginning of the suit said conjugal partnership had been dissolved by the death of the wife, Altagracia Nadal, who was the aunt of the plaintiff, and who by her last will and testament, which had been duly probated according to law, devised to plaintiff all the right, interest, and claim which might remain to her in the properties belonging to her, which should be in the name of her said husband Sanjurjo. The complaint closed by alleging (par. VII) that, while the grantees of Sanjurjo might have been entitled to remain in possession of the whole property so long as the conjugal partnership existed, because of the law giving to the husband the management and control of the community property, the title and right of possession to an undivided one-half interest therein descended to and became vested in the plaintiff as devisee of his said aunt from the moment of the dissolution of said partnership by her death, and by an amendment added to said complaint as paragraph VIII (page 5) that said property was not upon such dissolution of said conjugal partnership subject to any debts or other obligations of the same, but passed to plaintiff free and clear of any lien or burden whatsoever.

No demurrer was interposed to the amended complaint, and the original answer of the defendant (pages 5-7), complying with the Code procedure, was divided into paragraphs corresponding to those of the complaint, while this was later

superseded by a more specific amended answer filed by consent (pages 7-11). This amended answer admitted the purchase by Sanjurjo during the marriage, but denied that it was made with the money of the wife, that she had any interest in it, or that he could not alienate it without her consent. It is further denied that she did not give her consent to the conveyance or had not then or subsequently consented thereto, or that any interest in said property had descended to or vested in the plaintiff.

After answering the allegations of the complaint this amended answer set up a separate defense (page 9) to the effect that, before the conveyance of the property now in question by the husband, the wife had begun a suit against him "for an accounting of her *paraphernal* property"; that a settlement of that controversy was thereafter made between them under which certain property was conveyed to the wife; that during that settlement no claim was made by the wife to this property; that valuable improvements had been made on the property since the sale, and that the wife had lived in such a situation as to know of the sale and these improvements, yet had made no claim; hence, that she and those claiming under her were estopped.

To the portion of the amended answer constituting this separate defense the plaintiff demurred (page 11) on the ground that the facts so alleged were not sufficient to constitute a valid defense to the action. No ruling was had on this demurrer until the case was called for trial, at which time the demurrer was overruled (page 12) and an exception taken.

Thereupon the trial of the cases proceeded, and, at the close of all the testimony, counsel for defendant moved the court to instruct the jury to return a verdict in favor of defendant, which motion was granted (page 12) and judgment entered accordingly (page 13).

The evidence so presented was preserved by a bill of exceptions signed *nunc pro tunc* as of the last day of the term

at which the trial was had (pages 13-101), and thereafter a petition for a writ of error was duly presented and allowed, a cost bond filed and approved (pages 101-2), and a writ issued (page 108).

As many of the errors of the court below consisted in rulings upon the admission or exclusion of testimony, numerous separate errors were provisionally assigned (pages 103-7). But as the judge below withdrew the case from the jury and charged them peremptorily for the defendant upon two distinct grounds (page 100): (1) That the plaintiff had shown no title, and (2) that the last will and testament of his aunt Altgracia Nadal, through whom he claimed, conveyed no interest in this property to him, we will here discuss only those errors which led the court below to take those positions, the others being incidental to the fundamental misconceptions resulting in those conclusions. We, therefore, reassign and insist upon the following errors:

Assignment of Errors.

I.

The court erred in overruling the demurrer filed by the plaintiff on September 1, 1910, to the affirmative defense interposed by the amended answer of the defendant.

II.

The court erred in holding that a translation of a document introduced in evidence in a foreign language, made by its official interpreter, was irrefutable, and in refusing to determine judicially for itself the correct translation and meaning of a clause or sentence of said document, whose true meaning in the English language was in dispute between the parties.

III.

The court erred in accepting the following translation into English, to wit:

"I also bequeath to my nephew Rafael Martinez Nadal the legal mortgage executed by my husband in my favor upon the cattle ranch situated in Guanajibo of Cabo Rojo, in case the assignment which I made of the said mortgage in favor of my nephew aforesaid, Rafael Martinez y Nadal, shall not have become effective, all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband,"

as a correct translation of the following sentence in the Spanish language, to wit:

"Lego tambien á mi sobrino Rafael Martinez y Nadal, la hipoteca legal otorgada por mi esposo á mi favor sobre una finca de crianza sito en Guanajibo de Cabo-Rojo, caso de que no hubiese surtido efecto la cesión que ante Notario hite de dicha hipoteca á favor de mi ameritado sobrino Rafael Martinez y Nadal, todos los derechos y acciones que puedan caberme en los bienes míos que estén á nombre de mi esposo Isidro Fernandez Sanjurjo, en virtud de la transacción celebrada con mi dicho esposo."

IV.

The court erred in sustaining the objection interposed by defendant to the following question propounded by plaintiff to his witness Francisco del Moral:

"Do you know, from statements made by Isidro Fernandez Sanjurjo to you, whether or not he had any property at the time of his marriage to your aunt?"

Whereby plaintiff expected to prove that said Sanjurjo had no property at that time, which was a fact material to the issues.

V.

The court erred in sustaining the objection interposed by defendant to the following question propounded by plaintiff to Salvador Nadal, a witness called by him in rebuttal:

"What became of all the property—121,000 pesos?"

Plaintiff expecting to prove by said witness that said Isidro Fernandez Sanjurjo, the husband, had received and invested it all.

VI.

The court erred in overruling the objection of plaintiff to the question propounded on behalf of defendant on the cross-examination of said witness Salvador Nadal, as follows:

"Has there ever been, to your knowledge, any liquidation of the community property owned by Sanjurjo and his wife?"

to which witness was allowed to reply "I think there has been no liquidation between the parties."

VII.

The court erred in holding and in instructing the jury that no right in the property in controversy passed to the plaintiff under the last will and testament of Altagracia Nadal y Freyre.

VIII.

The court erred in instructing the jury to bring in a verdict for the defendant.

ARGUMENT.

Before proceeding to discuss specific errors, we think it will aid the court, as the property relations between husband and wife under the laws of Porto Rico are fundamentally involved, to excerpt from its Civil Code those sections which bear materially upon the discussion. They are as follows:

"§ 129. Marriage is a civil institution originating in a civil contract whereby a man and a woman mutually agree to become husband and wife and to discharge toward each other the duties imposed by law. It is valid only when contracted and solemnized in accordance with the provisions of law; and it may be dissolved before the death of either party only in the cases expressly provided for in this Code.

"§ 163. Marriage is dissolved in the following cases:

- "1. By the death of the husband or wife.
- "2. By divorce legally obtained.
- "3. If the marriage be declared null.

"§ 1282. * * * In the absence of (marriage) contracts relating to property it shall be understood that the marriage has been contracted under the system of legal conjugal partnership.

"§ 1310. By virtue of the conjugal partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.

"§ 1312. This partnership cannot be renounced during the marriage, except in case of judicial separation. * * *

"§ 1313. The conjugal partnership shall be governed by the rules of articles of partnership in all that does not conflict with the express provisions of this chapter.

"§ 1316. To the conjugal partnership belong:

- "1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only.

"2. That obtained by the industry, salaries, or work of the spouses or of either of them.

"3. The fruits, income or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses.

"§ 1322. All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife.

"§ 1327. The husband is the administrator of the conjugal partnership, with the exception of what is prescribed in sections 81 and 82 of chap. VI, title V, of book first of this Code (an exception not applicable here).

"§ 1328. Notwithstanding the power which the husband has as administrator, he shall not have the power to give, to sell and to bind for a consideration the real estate of the conjugal partnership, without the express consent of the wife.

"Every sale or agreement which the husband may make in respect to said property in violation of this section and the other provisions of this Code, or in fraud of the wife, shall be null and shall not *prejudice her or her heirs*.

"§ 1330. The community of goods terminates when the marriage is dissolved in the cases indicated in this Code, or is declared null.

"Then, after providing (secs. 1331-6) for the inventory and liquidation of the conjugal partnership, it proceeds:

"§ 1337. The net remainder of the partnership property shall be divided, share and share alike, between the husband and the wife, *or their respective heirs*.

"§ 1342. In the absence of a specific declaration of the marriage contract, the separation of the property of the spouses during the marriage shall not take place except by virtue of a judicial decree."

As the first error assigned affects a ruling upon a special defense set up by defendant, we shall pass it to be discussed in connection with other errors under the last point in this

brief, and shall first discuss the contention which led the court below to decide that plaintiff acquired no interest in this property under the will of his aunt.

I.

Error as to Translation and Meaning of Will.

This discussion refers to the second, third, and seventh errors assigned. The controversy over the question of the conclusiveness of the translation made by the official interpreter, and the true meaning of the particular clause in dispute is found on pages 14, 15 and 76 of the record. The question is important because it involves the meaning of that clause of the will of plaintiff's aunt under which he claimed the property in controversy was devised to him.

(a) The court below ruled that the translation as certified by the official interpreter must be accepted as conclusively correct; neither could it be controverted, nor could the interpreter be examined to bring out an explanation of the meaning of the language as used in the original.

We do not so understand the functions of an interpreter or translator, whether he be an official of the court or not. The interpreter of the United States Court in Porto Rico is not even an official created by law with power to perform certain duties; he is a mere employee for the convenience of court and counsel. He assists the court in making known the testimony of witnesses speaking foreign languages, and the contents of contracts or documents requiring translation, and doubtless his interpretations and translations are to be regarded as *prima facie* correct. But to hold that they are conclusive and cannot be questioned or corrected unless the good faith of the official is impeached is to put the servant in equal authority with the master. We believe the court itself must be the final arbiter as to the correctness of translation

and meaning, and even that, in case of different contentions as to the meaning of the language used, where there is ambiguity, parties have the right to have the meaning determined by the jury as in all other questions of fact.

United States vs. Turner, 11 How., 663, 667.

Adams vs. Akerlund, 168 Ill., 632, 635.

(b) If, then, the court should have determined the true meaning of the seventh paragraph of the will of Altagracia Nadal, we contend that the construction drawn by the court from the translation made by the official interpreter was erroneous, and, in order that that question may be considered and determined by this court, that paragraph in its original language and the translations respectively contended for have been set forth in the bill of exceptions on said pages 14 and 15.

A mere reading of the two translations, in connection with the comment of Mr. Brown, counsel for defendant, while reading the version contended for by him, must make plain that the only material difference is whether the last sentence of the paragraph refers to two distinct devises or includes only one. It cannot be disputed that two distinct things are mentioned in the sentence, the first being "the legal mortgage executed by my husband in my favor upon the cattle ranch," etc., and the other, "all the rights and actions which may pertain to me in the properties which are in the name of my husband," etc. Those two phrases are separated by a conditional clause which expressly refers only to the first. One of the things indicated has the nature of a chose in action; it is an indebtedness secured by mortgage. The other is an interest in realty. Hence the things indicated are distinct not only in the manner of enumeration, but also in the character of the things themselves. The construction of plaintiff was that this distinctness showed that, when the testatrix wrote "lego" (I devise) and followed it with these two separate phrases indicating distinct objects of devise of

different characters, she must have intended to link the two objects together in a way equivalent, in good English, to the copulative conjunction "and." Counsel for defendant and the interpreter stood upon the simple proposition that, as there was no equivalent to the "and" *expressed* in the Spanish, the word could not be supplied. Yet the plaintiff was not allowed to ask what the meaning of the sentence was without any "and" (page 76, bottom). It would seem to be a sufficient confirmation of plaintiff's construction that a reading of the sentence without the "and" conveys no intelligent meaning. The omission of the "y" from the Spanish was doubtless a mere scrivener's mistake.

But this ruling was of vital importance to plaintiff, as was shown when the trial judge explained his reasons for giving this peremptory charge in favor of defendant. On page 100 he said:

"But of course, assuming for the sake of disposing of this motion, that the woman * * * did have perfect title. *This will conveys nothing.* It would be spending time uselessly talking about that."

We, therefore, submit that plaintiff was prejudiced by the errors here discussed, and that a new trial should be ordered so that the meaning of this paragraph of the will may be determined by the court below after proper investigation or may be submitted to the jury under proper evidence and instructions.

II.

Errors in Admission or Exclusion of Evidence.

(1) Fourth Error. The court sustained an objection of defendant to the question asked by plaintiff of his witness, "Do you know, from statements made by Isidro Fernandez Sanjurjo to you, whether or not he had any property at the time of his marriage to your aunt?" (page 23).

No specific or valid ground of objection to this question was stated by counsel, and it should have been overruled for that reason. But, passing that, it sought material and important information in a legitimate way. The title to the property claimed had vested in Sanjurjo and he had conveyed it. The complaint alleged that the money with which the property was bought was money inherited by Sanjurjo's wife, plaintiff's devisor, which was denied by defendant. We had a right to prove, by the admissions of Sanjurjo himself, that he had no property when he married, in connection with the fact that his wife had large property (pages 26-31, '98), which was turned over to his control (page 24), as tending to prove that in buying a property worth \$19,000 or more (page 20) he must have used proceeds of the property which his wife had turned over to him.

(2) Fifth Error. The court sustained objection of defendant to a question asked by plaintiff of his rebuttal witness Salvador Nadal, "What became of all the property—121,000 pesos?" (page '98).

While the form of the objection was ambiguous, the court evidently took it as meaning that the matter sought to be brought out was not proper rebuttal. If it meant anything specific, the court probably guessed right. But for the same reason just stated above, as Sanjurjo had claimed that he had used but a small part of his wife's inheritance at any time and had returned that part (page 88), we had a right to prove that the whole of the 121,000 pesos had been turned over to him and used by him.

(3) Sixth Error. The court overruled objection of plaintiff to question asked by defendant on cross-examination of the same witness: "Has there ever been, to your knowledge, any liquidation of the community property owned by Sanjurjo and his wife?" (page 99).

The objection was twofold: that it was immaterial, and

that no such issue had been raised by the pleadings. And the answer was that witness thought there had been none—an answer harmful to plaintiff if that fact was in any way material.

It will aid clearness to consider the above objections in their inverse order because the latter, though of narrow compass, will be decisive.

(a) The inquiry suggested was not within the issues made by the pleadings.

It will be noted that under the stipulation between the parties of August 16, 1910 (page 7) the amended answer superseded and substituted the original answer. In the eighth paragraph of the complaint, added to it by amendment (page 5), it is alleged that the premises in controversy "were not upon the dissolution of said conjugal partnership subject to any debts or other obligation of the same, but said undivided one-half interest therein passed to the plaintiff as above alleged free and clear of any obligation and of any lien or burden whatsoever." In no part of the amended answer (pages 7-11) is there a denial of these allegations or any suggestion that the alleged want of title in the plaintiff was due to failure to compel a liquidation of the conjugal partnership.

Under the Code of Civil Procedure of Porto Rico, section 132, a failure to deny an allegation of fact is an admission of the fact:

"SECTION 132. Every material allegation of the complaint, not controverted by the answer, must for the purposes of the action, be taken as true; the statement of any new matter in the answer in avoidance or constituting a defense or counter claim, must, on the trial, be deemed controverted by the opposite party."

By the specific denials contained in the amended answer to all other allegations of the amended complaint not specifically admitted, and by the omission of any allusion to such a contention in the special defense annexed to the amended answer, the plaintiff was not put on notice that such a defense would be interposed, and the issues as made did not include it.

Gonzalez *vs.* Ortiz, 17 P. R. Rep., 563, 565.

(b) The question of diquidation of the conjugal partnership was immaterial.

As above stated, the complaint contained an allegation, not denied, that at the dissolution of the conjugal partnership no obligations or liabilities existed against it which affected this property. Therefore, there was no need of a liquidation to determine the respective interests of the spouses in that property. Sections 1331-6 of the Civil Code show that the requirement of liquidation is for the benefit of creditors. If creditors have no claims, there is a right to an immediate division, for the following section (1337) says:

"The net remainder of the partnership property shall be divided, share and share alike, between the husband and the wife, or their respective heirs."

Therefore, if plaintiff inherited the ganancial interest of his deceased aunt in the property belonging to the conjugal partnership dissolved by her death, and no liquidation was necessary to fix that interest, his right of possession to the undivided one-half thereof accrued immediately thereafter.

We therefore submit that the question propounded called for information not within the issues made between the parties, but even if within the issues, immaterial in law to the determination of those issues.

III.

Peremptory Charge for Defendant Erroneous.

This refers to the eighth error assigned. We have already referred to the two reasons given by the judge below for directing a verdict for defendant, and have demonstrated, we think, that the first reason lacked foundation because, under the last will and testament of his aunt, as properly interpreted and construed, plaintiff acquired whatever interest she had in the property in controversy, and by the dissolution of the conjugal partnership without obligation affecting that property, became entitled to the possession of the undivided one-half of it.

Two things remain to be considered then: First, whether plaintiff had furnished sufficient evidence to prove his right of possession, and second, whether, in case he had, defendant had produced proof conclusively overcoming the *prima facie* case of plaintiff.

1. *Plaintiff established a prima facie case.*

In the first place he introduced the will of his aunt, under whom he claimed, which has been already referred to, and the proper evidence of what corresponds to its probate (pages 16-22).

Then, by the plaintiff himself, the relationship with his aunt, his identity with the devisee named, the marriage relation between his aunt and Isidro Fernandez Sanjurjo, the possession of the defendant, and the rental value of the property were proven (pages 14, 23).

The fact of the marriage between Sanjurjo and Altagracia Nadal and its existence at the time of the purchase by the former of said property had been admitted in paragraph III of the defendant's amended answer (page 8).

Plaintiff then proved by the certificate of the Registrar of

Property (page 19) that Sanjurjo had sold that property by a deed executed by him on June 2, 1902, without his wife joining therein, and also introduced the deed of conveyance (pages 24-6).

He further introduced the schedule of the property set apart for Altagracia Nadal as an heir of her parents (pages 26-31), whereby her inheritance was shown to be valued at 121,196.97 pesos, and to have been inherited during the marriage (page 23, bottom).

His attempt to prove that Sanjurjo had no property was prevented by a ruling of the judge below, already discussed (page 23). See II, (1) *ante*. This attempt was made on the part of plaintiff because an allegation had been made in the complaint that Sanjurjo paid for this property with his wife's funds. But, as the action was only to recover the wife's half of the community, such an allegation was unnecessary. That is clearly shown by the language of sections 1316 and 1322 of the Civil Code, hereinbefore quoted, and also by the decisions of the Supreme Court of Porto Rico. Whether bought with separate or community funds, property acquired during marriage is community property unless expressed and proven to be otherwise.

Dooley vs. Registrar, 12 P. R. Rep., 202.

Rodriguez vs. Registrar, 14 P. R. Rep., 754.

Hanrick vs. Patrick, 119 U. S., 156, 172.

Thus, starting with the admission that the land had been acquired by Sanjurjo during his marriage with the plaintiff's aunt, we showed that the conveyance was made in 1902, without the wife joining; that the conjugal partnership continued in existence until the death of the wife in 1906; that the property came within the terms of a devise to the plaintiff by her valid last will and testament; that defendant had been in possession and control of the property since the year 1904; and that its rental value was \$2,500 per year.

The Civil Code of Porto Rico of 1902 was in force at the

time of the conveyance by the husband, hence it might have been claimed that his conveyance was entirely void under the provisions of section 1328 of that Code, heretofore quoted; but, as in any event the husband was entitled to one-half of the property, plaintiff elected to recover only the undivided half which in law belonged to his aunt, and through her to him. From some of the remarks of counsel for defendant during the trial, it is to be inferred that plaintiff's alleged failure to make a case was due to the peculiarities of the system of marital rights prevailing under the Spanish and Civil law, as based upon two propositions—first, that said section 1328 was invalid as to property acquired previous to its passage, because violative of the vested rights of the husband in such property; and second, that the right of the wife during the marriage in the community property was only an expectancy and could not attach to property conveyed by the husband prior to the dissolution of the conjugal partnership.

But we think both these points have been decided by this court adversely to the contention of defendant.

The first contention is expressly disposed of in the recent decision of *Arnett vs. Reade*, 220 U. S., 311.

There it appeared that New Mexico has a statute exactly like section 1328 of the Porto Rican statute, and that in other respects the New Mexican law can properly be said to have been derived from the same sources as the Porto Rican law. On page 318 of the opinion in that case this court disposed of that contention by saying that there was "nothing in it."

As to the second contention, this court declared in a case coming before it from the then Territory of Washington, that the laws of that Territory adopted

"the features essentially inhering in what is denominated the community system—that is, that property acquired during marriage with community funds became an acquet of the community and not the sole property of the one in whose name the property was bought."

Warburton vs. White, 176 U. S., 484, 494.

It was afterwards decided by the Supreme court of the State of Washington that, where the community is dissolved by divorce, the community property becomes property held by the husband and wife as tenants in common (*Ambrose vs. Moore*, 46 Wash., 463). It necessarily follows that, where dissolution has been by death, the community property is held by the surviving spouse and the heirs or devisees of the deceased as tenants in common.

That position is further supported by a quotation from the case of *Guice vs. Lawrence*, 2 La. Ann., 226, made with approval by this court in *Garrozi vs. Dastas*, 204 U. S., 64, 82, as follows:

"The rule of the Spanish law on that subject is laid down by Febrero with his usual precision. The ownership of the wife, says that author, is revocable and fictitious during marriage. As long as the husband lives and the marriage is not dissolved, the wife must not say that she has *gananciales*, nor is she to prevent the husband from using them, under the pretext that the law gives her one-half. But, *soluto matrimonio*, she becomes irrevocably the owner of one undivided half, in the manner provided by law for ordinary joint ownership."

Moreover the more recent case of *Arnett vs. Reade*, above cited, is applicable also upon this point. While the parties in that suit were the reverse of the parties in the present case, the grantees of the husband being complainants and the action one to quiet their title, it is in all other respects identical with the case at bar. There the land had been bought in 1899 and 1893, and the attempted sale by the husband to complainants was in 1902, the same year as in the instant case, while the New Mexican statute had been passed one year earlier. Referring to the "notion that the husband is the true owner" during marriage, Mr. Justice Holmes, for this court, said (220 U. S., at 320):

"However this may be, it is very plain that the wife has a greater interest than the mere possibility of an

expectant heir. For it is conceded by the court below and everywhere, we believe, that in one way or another she has a remedy for an alienation made in fraud of her by her husband * * * As she was protected against fraud already, we can conceive no reason why the legislature could not make that protection more effectual by requiring her concurrence in her husband's deed of the land."

And the wife's heirs were left in possession of their inheritance.

From the principles laid down in the foregoing cases we think it demonstrated that there was nothing in either of the contentions above specified.

It may also be suggested, in closing this point, that there was no foundation for the contention indicated in the answer of the defendant that the consent of the wife to the conveyance by the husband might have been expressed in some other manner than by joining in the deed; the intimation apparently being that an assent *in pais* would be sufficient. It has repeatedly been decided by the Supreme Court of Porto Rico that the consent of the wife provided for in section 1328 must be either by joining in the deed or by subsequent ratification in equally solemn form.

Caballero vs. Registrar, 12 P. R. Rep., 214.

Vidal vs. Registrar, 12 P. R. Rep., 198.

Boscio vs. Registrar, 14 P. R. Rep., 605.

Caballero vs. Pomales, 17 P. R. Rep., 691.

We, therefore, submit that plaintiff had made a clear *prima facie* case.

2. *Evidence for defendant not sufficient to overcome plaintiff's case.*

The first evidence offered by defendant consisted of six deeds (pages 32-57), the evident purpose of which, combined with certain oral testimony of Sanjurjo himself (page 87),

was to prove that Sanjurjo had been the real owner of the property since he first acquired it in the year 1900. But, granting that to be the fact, it would make no legal difference in the status of that property as community property, because such status was not thereby disproven to exist on the date of Sanjurjo's conveyance, to wit, June 2, 1902; and it is *as of that date* that the right of Sanjurjo to convey and the right of the wife to claim, despite that conveyance, is to be determined.

The next testimony on behalf of the defendant covered a certain suit brought by his wife against Sanjurjo in the local Insular Court, in 1901, and the agreement by which that suit was compromised and dismissed, together with certain other documents executed between the husband and wife as a consequence of that settlement (pages 59-75, 78-85). That suit and its consequent agreements could not possibly affect the rights of the parties as to the property in controversy in the present suit, because that suit and compromise, as shown by the pleadings and subsequent instruments, was confined to a settlement on the part of Sanjurjo of his responsibility for the *paraphernal* property which his wife had turned over to him; while the claim of the present plaintiff is based upon the fact that the property here in controversy was not paraphernal, but belonged to the *community*. All the oral testimony on behalf of the defendant, which consisted of the evidence of José de Diego (pages 78, 85), of Sanjurjo (page 86), and of Arnaldo (page 89), also referred principally to the same suit and settlement. The remaining testimony of Sanjurjo referred to the ownership of the funds with which the property in controversy was purchased, which we have hereinbefore shown to be immaterial; and the testimony of the defendant himself (page 90) simply admitted his possession of the property and explained that he held it as an employee of the United States Department of Agriculture, while the title to the property, as he understood it, was in the people of Porto Rico.

The only other item of evidence was a copy of the material parts of the record in a prior suit brought by the present plaintiff against said Sanjurjo in the Insular Court in the year 1908 (pages 91-95). The only purpose for which that record was introduced, as stated by counsel for defendant at the time of its introduction (page 90), was to show admissions of the plaintiff against his interest. But a careful perusal will show that there are no admissions, even if the same could be binding upon plaintiff here, which affect his rights in the present suit.

Sturm vs. Boker, 150 U. S., 312.

In fact, the real purpose of the introduction of practically all of this evidence on the part of the defendant was in support of his special defense (pages 9-11), as hereinbefore explained, and the materiality of said evidence as applicable to said special defense will now be discussed under the closing head of this brief.

IV.

Special Defense Insufficient.

This discussion will cover the first error assigned, which was the overruling of plaintiff's demurrer to this special defense (page 11), and is at the same time pertinent to round out the previous point as to whether anything produced by the defendant at the trial was sufficient warrant for the peremptory charge of the judge below in his favor.

A proper understanding of the issue thus raised necessitates a statement somewhat more detailed of the matters set forth in that defense, and of the law of Porto Rico governing those matters, although the same may involve some repetition of the ground already covered.

The allegations of this defense may be summarized as follows: Sanjurjo and his wife were already married at the

time the former purchased the property in dispute, in the year 1900, the purchase price being 36,000 pesos, of which he paid 21,000 pesos in money or property of his own, and left a mortgage on it for the balance of 15,000 pesos. About the time of said purchase his wife deserted him, refused to live longer with him, and never did live with him thereafter.

In May, 1901, his wife began an action against him "for an accounting of her *paraphernal* property," which action was settled before trial by a "contract of agreement," whereby Sanjurjo conveyed to her certain properties and a mortgage for \$5,000, and gave her \$5,000 in cash; also whereby the wife released to him all rights and actions which she might have against him "in reference to the property theretofore or thereafter acquired by" him; and thereupon she dismissed her said action.

During the making of said settlement the property described in the complaint was not considered nor claimed by the wife, because it was incumbered by a mortgage for \$21,000 (probably meaning pesos), its full value.

In June, 1902, the husband conveyed the property to Alicia Garcia Sanjurjo for the purpose of conveying the same to the People of Porto Rico, which purpose was consummated two months later by the latter for \$19,000.

Between the making of said settlement between husband and wife, and the transfer to the People of Porto Rico, the husband paid off all the mortgages except one of \$5,600, and a judgment lien of \$900, which were paid by the People at the time of its purchase, the balance of \$12,500 being paid to the husband. At that time a house, a mill and some sheds were the only improvements upon the property, and between that time and July, 1906, the defendant had made substantial improvements at a cost of \$50,000.

From the time of leaving her husband, as aforesaid, up to the time of her death the wife lived in Mayaguez, within a short distance from said premises, and knew of the sale to the people of Porto Rico and of the improvements that were

being made, but never "made any objections thereto, nor asserted any claim to the property; but on the contrary disavowed any right, title or interest in the same, and never during her life asserted any claim to the premises in dispute."

Wherefrom the defendant asserted an estoppel on her part to claim, and averred that "all those claiming under her are now barred in law." Let us see whether all this amounted to an estoppel or constituted a defense on any other ground under the laws of Porto Rico.

While the judge below apparently failed to grasp the difference in property rights resulting from marriage in Porto Rico as distinguished from many of our States (see remarks on pages 98-100 of the record), this court is familiar with the law of conjugal partnership or community property there prevailing (see sections of Code quoted above).

Garrozi vs. Dastas, supra.

It is clear that the conjugal partnership can only be dissolved by a decree of court, or by the death of one of the spouses, and it is *ipso facto* dissolved from the moment of such death or decree (secs. 163, 1312, 1330, 1342).

As stated in the *Garrozi* case, *supra*, by the old Civil Code (in force until March 1, 1902), the husband had not only the management and control of the conjugal partnership property, but the absolute power to dispose of the same. But a change was made by the Civil Code of 1902 (in force at the time the husband conveyed to Alicia Garcia Sanjurjo), whereby the husband was deprived of that former right (sec. 1328).

Moreover, the allegation herein touching the settlement between husband and wife cannot affect the rights of plaintiff for two reasons: because such a settlement during the continuance of the conjugal partnership was not allowed under the law (sec. 1342 of the Code, *supra*, and *Feliu vs. Registrar*, 16 P. R. Rep., 728), and because the subject-matter of the settlement was confined to *paraphernal* property, as hereinbefore explained.

Wherefrom we deduce the following legal conclusions applicable to the allegations of the special defense:

(a) The wife had an equal interest with the husband in this property at the time he *conveyed* it, in June, 1902.

(b) At that time the law did not give him power to convey it without her joining in the deed or ratifying it, nor could their mutual property interests be severed by contract between them during marriage.

(c) Her interest, therefore, continued until the dissolution of the partnership by her death, in 1906, unaffected by the alleged conveyance, or by the settlement and release.

(d) The wife's right of property, however, was subject to the possession, control and management of the husband, or his assignees, so long as the partnership endured; hence she could bring no action during her life (her husband surviving her), but she could devise her *right of property* by will—to which would be added in the devisee the *right of possession* by virtue of the dissolution at her death.

(e) The right to a division of the property accrued only from the moment of dissolution; hence it accrued in the property *in the condition it was*, both as to incumbrances and improvements, *at the moment of dissolution*, and any averments as to its previous condition were immaterial.

Only two more points remain to be mentioned. This defense contained some reference to the question of improvements. Such averments could not be a defense, because the Code of Civil Procedure of Porto Rico in force at the time provided a specific way to claim the value of improvements, and such claim could only be offset against the plaintiff's claim for mesne profits. It did not affect the right to recover possession. Section 285 of the Code of Civil Procedure reads as follows:

“When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely

to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages."

This special defense closes by claiming that its allegations constitute an estoppel against the plaintiff. The law of estoppel is too well settled in this court to need discussion.

Mutual Life Ins. Co. vs. Phinney, 178 U. S., 327, 342.

Wiser vs. Lawler, 189 U. S., 260, 270.

Crary vs. Dye, 208 U. S., 515, 521, 524.

In the last cited case, on page 521, it is said:

"When the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

The claim, apparently, is that plaintiff is estopped through his ancestor, the aunt. But it is sufficient to suggest that there could be no estoppel from any attitude of hers, so long as her right to claim some voice or control in the matter had not arisen; and admittedly such right did not arise until the moment of her death. The rule that an estoppel can arise only by some affirmative action or representation on the part of the party against whom estoppel is claimed, is even clearer in the Spanish and Porto Rican law than in the law declared in the above decisions of this court.

Fernandez vs. Gutierrez del Arroyo, 10 P. R. Rep., 59, 69.

The special defense was therefore insufficient, and no evidence introduced to support it could warrant relief under it.

V.

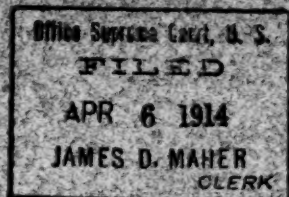
For the foregoing reasons, we respectfully submit that the judge below deprived the plaintiff of a substantial right when he refused at least to submit to the jury the issues joined

between the parties, and we respectfully urge that the judgment entered upon the verdict so directed should be vacated and reversed, and a new trial ordered.

Respectfully submitted.

N. B. K. PETTINGILL,
F. L. CORNWELL,
Attorneys for Plaintiff in Error.

[23217]



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 130.

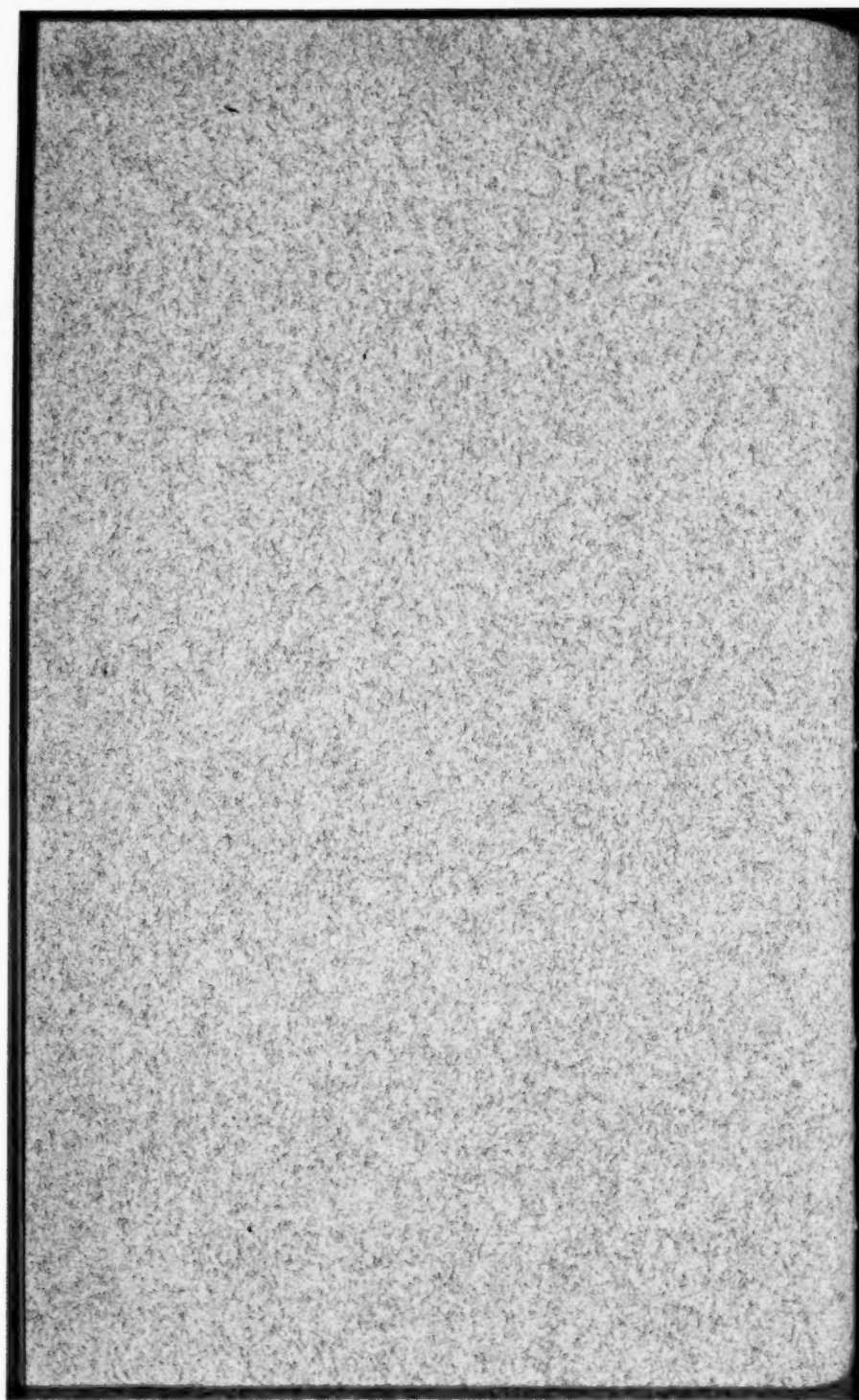
RAFAEL MARTINEZ NADAL, PLAINTIFF IN ERROR,

vs.

DAVID W. MAY.

REPLY BRIEF.

F. L. CORNWELL,
N. B. K. PETTINGILL,
Attorneys for Plaintiff in Error.



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RAFAEL MARTINEZ NADAL, PLAINTIFF IN ERROR,

vs.

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REPLY BRIEF.

Since the original submission of this cause in December last and its subsequent restoration to the docket counsel have appeared for defendant in error and filed a brief, resting their contentions upon four principal points, upon each of which we wish to say a word in reply.

I.

Revised Civil Code in Force March 1, 1902.

It is true, as contended, that the Supreme Court of Porto Rico in the cited case of *Buso vs. Buso* held that the Revised Civil Code went into effect July 1, 1902, and it is also true that section 1328 of that Code was a new section inserted

therein, which changed the law as it had previously obtained and first gave to the wife the power, by withholding her consent, to prevent the alienation of the real property belonging to the conjugal partnership.

But an examination of the Buso decision will show that the Supreme Court of Porto Rico did not investigate the question for itself as an independent legal proposition, but was merely misled by the recital contained in the certificate of the Secretary of Porto Rico prefixed to the official printed volume of the Codes. As the basis of its holding in that case that Supreme Court merely cites and adopts the language of its previous decision in *Estate of Morales vs. Registrar of Property*, 16 P. R., 109, where it said on page 114:

"The Revised Civil Code went into effect on July 1, 1902, according to the certificate issued by the then Secretary of Porto Rico, Charles Hartzell, which certificate is found at the beginning of the Revised Statutes and Codes of Porto Rico."

Upon an examination of the certificate referred to in the foregoing extract it will be found to read as follows:

"That the said volume contains correct transcripts of the text of the original laws and resolutions including the Political Code, the Penal Code, the Code of Criminal Procedure and the Civil Code, as the same *by their terms* are in effect on and after the first day of July, A. D. nineteen hundred and two," etc.

This certificate, it will be noted, states that the Codes *by their terms* went into effect on the day stated, but such a statement was simply an inexcusable mistake of an executive officer of the Government as to two of the four Codes. The Penal Code and the Code of Criminal Procedure each contains an express provision in the last paragraph of the last section postponing their effectiveness until July 1 following their enactment, but neither the Political nor the Civil Code

contains any such provision—nor, indeed, any express provision in that regard.

There is, moreover, a provision in the Political Code which reads as follows:

“SECTION 41. Every statute, unless a different time is prescribed therein, takes effect from its passage.”

Although it might well be contended that the quoted section would avail to fix the date on which the Code of which it was a part, as well as the Revised Civil Code which was approved on the same day, would go into effect, yet that contention is not necessary because the section is but declaratory of the law as uniformly settled in the absence of any express provision to the contrary.

Matthews vs. Zane, 7 Wheat., 164, 211.

Memphis vs. U. S., 97 U. S., 293, 296.

Seven Hickory vs. Ellery, 103 U. S., 423.

Louisville vs. Savings Bank, 104 U. S., 476.

Robertson vs. Bradbury, 132 U. S., 491.

In its decision in the Buso case the Supreme Court of Porto Rico also cites in support of its statement the decision of this court in *Ortega vs. Lara*, 202 U. S., 339; but an examination of that decision demonstrates that the question was not there involved. The action there was for breach of promise of marriage, the promise having been made in the year 1900 and the breach alleged to have occurred in 1904. The only contention was whether the damages recoverable for such breach were to be measured by the law in force at the earlier or the later of those dates. The law in force in 1904 was the Revised Code of 1902, whether it became effective on March 1 or July 1. In the brief filed in that case for the defendant in error the statement was casually made (doubtless taken from the same certificate prefixed to the official print) that the Code of 1902 became

effective July 1, and that statement—an entirely immaterial one—was incorporated into the opinion of this court.

Moreover, in neither of the cited cases from the Supreme Court of Porto Rico was the point as to the date when the Revised Civil Code went into effect raised by the parties, but the court assumed its correctness without discussion, misled, as its language clearly indicates, by the error of the head of an executive department.

This court has gone far in declaring its reluctance to disturb the conclusions of territorial courts touching the statutory laws of their Territory, but surely it will refuse to be bound by a holding not made in the instant case and clearly resulting from error and inadvertence. In the recent *Santa Fe* case, cited by opposing counsel, this court draws the line at following decisions "clearly wrong."

We are satisfied this court will not hold that the Secretary of Porto Rico was clothed with either legislative or judicial authority whereby his *ipse dixit* could contradict settled principles of law.

The Revised Civil Code was approved by the Governor of Porto Rico on March 1, 1902, and, we insist, went into effect on that day as a matter of law.

Validating Act of February 24, 1903, Not Effectual.

In the third subdivision of the first head of the brief for defendant in error the above act of the Legislature of Porto Rico is called to the attention of the court as the final consideration wherefrom this court is asked to hold the conveyance made by Isidro Fernandez Sanjurjo without the consent of his wife on June 2, 1902, valid. Counsel quote the Act verbatim in their brief and it need not be repeated here.

In the first place, we submit that this act is clearly an attempt at retroactive legislation which is invalid, if applied to the conveyance in question, because it "devests the settled

rights of property." That this cannot be done has been uniformly held.

Wilkinson vs. Leland, 2 Pet., 661.

Mitchell vs. Campbell, 19 Ore., 198, 207.

Showk vs. Brown, 61 Penn., 320.

Brinton vs. Seevers, 12 Iowa., 389.

Boston F. Co. vs. Condit, 19 N. J. Eq., 394, 399.

Houston & T. C. R. Co. vs. Texas, 170 U. S., 243, 261.

If the law on June 2, 1902, prohibited the husband from conveying the community property without the consent of the wife and made an attempt at such a conveyance void as against her; and if the husband did, on that date, make such an attempted conveyance and the wife did not consent thereto; then the interest of such wife in said community property remained in her notwithstanding the attempted conveyance. If thereafter the Legislature of Porto Rico attempted by this validating or curative act to legislate such interest of the wife out of her and into the grantee of the husband, the result can only be what this court has described as

"in effect taking one person's property and giving it to another without compensation. This is contrary to reason and justice, and to the fundamental principles of the social compact."

Gunn vs. Barry, 15 Wall., 610, 622.

And Mr. Justice Holmes has said in a very recent case, cited by us upon another point, that

"We should require more than a reference to *Randall vs. Kreiger*, 23 Wall., 137, as to the power of the legislature over an inchoate right of dower, to make us believe that a law could put an end to her interest without compensation consistently with the Constitution of the United States."

Arnett vs. Reade, 220 U. S., 311, 320.

There is, of course, a numerous line of cases sustaining curative laws of a certain character and for certain purposes; but they may be described in a general way as laws validating some act which has been imperfectly done and making it binding upon the party who has thus acted. Here, however, the attempt was to deprive of a right and impose an obligation upon one who had performed no act whatever and made herself a party to no contract.

In the next place, we submit that the Legislature of Porto Rico was not guilty of thus attempting the impossible and that the act does not mean what is claimed for it. The only construction which is reasonable and which at the same time renders its provisions valid is to confine its application to those conveyances, etc., which were defective *because of the lack of* the certification by a notary or of the intervention of the family council, etc.; and so the court below held upon the demurrer to the original complaint (5 P. R., Fed. Rep., 582). The point was never renewed after the filing of the amended complaint. If the construction contended for by defendant in error were correct, the act would not only be invalid as taking property without due process of law, but would also be so all-comprehending as to be vague and meaningless.

The consent on the part of the wife is an "intervention" of like character with that of the family council, tutors, etc., and seems to have been intentionally omitted; at least no word is used which by any inference could be held to refer to deeds where the wife fails to join. As the statute specifically names "contracts * * * that may have required the intervention of the family council or a tutor or protutor," it seems unlikely that reference to the intervention of the wife, where required, would have been omitted had it been the legislative intent to apply the act to that provision.

Again, to hold that the wording was intended to cover generally "all conveyances * * * which require for their validity the certification by a notary," and not those

only which were defective for the lack of such certification, would result in rendering useless and superfluous the majority of the words of the statute. To effectuate such a purpose the statute would more naturally have been drawn to read substantially as follows:

"That all acts and contracts of whatever nature which require for their validity the certification by a notary that may have been executed or drawn on and after the first day of March, 1902, or on or prior to the first day of January, 1903, and which according to the laws of Porto Rico in force on the 28th day of February, 1902, would be valid and sufficient, etc., are hereby declared to be valid and sufficient for all lawful purposes thereby intended."

The more specific and descriptive language used by the legislature must, we think, be held to have been used for a purpose—and the construction suggested by us is the only one consistent with such a purpose. Moreover, the words, "and" and "or" are often substituted the one for the other in statutes in order to carry out the legislative intent (U. S. *vs. Fiske*, 3 Wall., 445), and we submit that the meaning of the statute would be clarified and all ambiguity avoided by substituting the word "and" for the "or" occurring after the comma at the beginning of the sixth line as printed, that is, so as to read "*and* that may have required," etc.; and thereby we believe the intent of the legislature would be carried out.

Still again, the last words of the act limit its purpose to the validation of the instruments specified "for all *lawful* purposes thereby intended." How could the purpose to make the deed of the husband alone convey the interest of the wife in community real estate be a *lawful* one when the law in force specifically prohibited that very thing?

Opposing counsel cite the case of *Estate of Morales vs. Registrar*, 16 P. R., 109, as supporting their contention of the applicability of this curative act, but it will be noted upon an examination of that case that, while the act was

mentioned by the registrar as supporting the action he took, no reference whatever is made to it in the reasoning of the court.

We submit that the validity of the conveyance made on June 2, 1903, by the husband alone is not sustained by either of the contentions made by counsel for defendant in error under their first head.

II.

Meaning of Paragraph Seven of Will Not Doubtful.

We think this has been sufficiently shown by the discussion in our main brief. Where the matters referred to are so distinct and any possible ambiguity can be removed by the insertion of the simple conjunction "and," we think no need exists to invoke the aid of an "interpreting background."

But the light cast by the interpreting background outlined by counsel for defendant in error does not help their case. The suit instituted by the wife against the husband was for an accounting of her *paraphernal* property. It did not involve the *community* property. That suit was voluntarily dismissed without any adjudication of the rights of either party, and the agreement given by the wife to the husband as the result thereof (p. 68) renounced solely the rights and interests claimed "because of the facts stated in the complaint," that is, her *paraphernal* rights. No reference is made to a relinquishment of her interest in the community property for the very good reason that the law did not permit such relinquishment by private agreement during the continuance of the conjugal partnership, as demonstrated in our main brief. Moreover, the amount received by the wife in the settlement, as stated in said agreement, was \$10,000, and this is expressly stated in the same instrument to be the amount found to have been received by the

husband "as the product of her *paraphernal* property sold by him." (See the second paragraph of said release agreement.)

The allegation in the wife's complaint that the "Carmen" was paraphernal property would not make it legally so, and it is admitted, as it must be from the documentary evidence introduced, that it was not paraphernal but community property. The wife's interest in the community property remained unaffected by that suit and its settlement and dismissal. That fact is still further shown by the wording of the power executed by the husband as a part of the same settlement (p. 69), whereby he gave her authority without his intervention "to dispose of her *paraphernal and private* property."

It is also argued that the language of the will could not have referred to the "Carmen" because the testatrix knew that her husband had executed a conveyance of that property to the People of Porto Rico. Certainly she knew that he had *attempted* to do so, but she also knew that such attempt had been without her consent and was therefore ineffectual to "prejudice her or her heirs" (sec. 1328, Rev. C. C., quoted in our main brief).

Applying the fundamental rule common to both English and Spanish law that the true construction of a will is found in the intent of the testator and that such intent is usually found by taking the words used in their ordinary significance and order, we submit that there clearly appears the intent of the testatrix to transfer to her devisee whatever interest legally remained to her in the property belonging in common to herself and husband at the time of the compromise agreement.

III.

Doctrine of Innocent Purchaser Not Applicable.

In the abstract, the statement is true that the mortgage law of Porto Rico protects an innocent purchaser from defects of title not apparent from the registry. But that principle cannot be applicable to the present case, as will be seen from an examination of the documentary evidence introduced on behalf of the defendant as well as of the plaintiff at the trial.

Beginning on page 51 of the printed record appears the deed by which Isidro Fernandez Sanjurjo last acquired title to the property. This deed is dated April 10, 1902, has attached to it a certificate (p. 54) that it was recorded on May 31, 1902, and recites in its first paragraph that the above-named Sanjurjo, party of the second part, was *married*. On page 24 of the record there appears as having been introduced in evidence on behalf of plaintiff the deed dated June 2, 1902, whereby said Sanjurjo conveyed the same property to Elisa Garcia Sanjurjo, in the introductory paragraph of which said Isidro Fernandez Sanjurjo is again described as married. This same deed was reintroduced by the defendant, as appears on page 54 of the record, and was immediately followed by the introduction of the deed from said Elisa Garcia Sanjurjo to the People of Porto Rico, dated August 29, 1902, wherein direct reference is made to the last-mentioned deed in the paragraph headed "Title" (p. 55), which reads:

"Second, that she acquired said estate by purchase from Isidro Fernandez Sanjurjo, according to deed executed before Notary Juan Quintero y Gonzalez of this city, on June 2 of this year, which title was recorded on folio 26, volume 49 of this city, estate No. 2505, entry 2."

By this evidence it is demonstrated that the registry itself put the People of Porto Rico expressly on notice, when this property was bought, that its grantor was a married man; hence had no right without the consent of his wife "to give, to sell or to bind" that property, which was also shown by the registry to have been acquired not only during his marriage with Altagracia Nadal, but also after said section 1328 of the Revised Civil Code was in force.

Opposing counsel refer to the want of a "cautionary notice specifying any defect in the title." The reference doubtless is to objections which the registrar may note as "amenable defects, as "cautionary notice" is but another term for *lis pendens*. But, while his annotation of such a defect would certainly be notice to a purchaser, the converse cannot be asserted *when the defects nevertheless appear in the registry*. This is clearly stated in the same article 34 of the Mortgage Law quoted in their brief when it says that "third persons" may depend upon the effect of "contracts executed or entered into by a person who, *according to the registry*, has a right to do so"—*not according to the registrar*.

The *registry* showed that Isidro Fernandez Sanjurjo, being a married man, had attempted to convey property acquired while he was married without obtaining the consent of his wife. The purchaser from him, or any grantee of such purchaser, was bound to know the law which made that conveyance void as to the wife and her heirs. So that the defect *was* apparent from the registry.

IV.

Division of Community Property Not Necessarily Matter of Probate Jurisdiction.

The discussion of this question in our main brief (pp. 17 to 19) has not been effectively answered by the argument for defendant in error. The cases cited from the Supreme Court

of Porto Rico are those involving the peculiar registration or recording laws of the island, not the passing of title as between the parties nor the right to claim an adjudication of the *undivided* half in a court of law. The inapplicability of the *Roca case* is further shown by the statement in the extract quoted in the brief of opposing counsel that the circumstances there proven were not sufficient "for holding that the estate in question is community property." So there was a question of fact to be settled. Here it was alleged to be such, which was not and is not now denied.

Counsel argues that "the need for such liquidation is to determine what property is to be claimed as community property." What need when the fact as to this property stands admitted? The only further need suggested by counsel is for the purposes of the Registry, but that need exists only where the Registrar is called upon to act upon the evidence of agreements between private parties. Such liquidation would be wholly superfluous where the facts are to be submitted to the determination of a court.

The complaint in this case alleged not only that the property claimed was community property, but also that it was subject to no claims or deductions and "passed to the plaintiff free and clear of any lien or burden whatsoever" (p. 5). That allegation stands admitted. Under such circumstances the Civil Code says that it "shall be divided, share and share alike, between the husband and the wife or their respective heirs" (Sec. 1337, main brief, p. 8).

So far as concerns the reference made by opposing counsel to the case of *Garzot vs. de Rubio*, 209 U. S., in support of their contention, it is sufficiently answered by the language of this court in the later case of *Arnett vs. Reade*, 220 U. S., 311, already cited herein. The *Garzot* case treated of the law of community property but casually as incidental to the main question, which involved the settlement of the estates of intestates, while another case from Porto Rico, *Garrozi vs. Dastas*, 204 U. S., 64, involved the

direct and exclusive consideration and decision of community property law. Commenting upon the *Garrozi* decision Mr. Justice Holmes, in the *Arnett* case, says, at page 319:

"Notwithstanding the citation in *Garrozi vs. Dastas* of some of the passages and *dicta* from authors and cases most relied upon by the court below, we think it plain that there was no intent in that decision to deny or qualify the expressions quoted from *Warburton vs. White*."

Warburton vs. White is cited in our main brief (p. 17) and is in line with the position of plaintiff in error here. In that case the wife had died intestate, the law providing in such case that her half should descend to her issue. Some years later the surviving husband sold a portion of the community property to the plaintiff, Warburton. The defendant had inherited or acquired all the interest of the children of the deceased wife. Warburton asked to have his title to the whole property quieted as against that defendant, and the defendant, as allowed under the practice there, prayed in her answer that her title might be quieted to her share as against the plaintiff. No general liquidation or separation of community property is alluded to in the case, yet the Washington court sustained the defendant's right to have her title to an undivided one-third part of the property described in the complaint in that case quieted and confirmed, and this court affirmed that decision. The statement made by the court explaining the provisions of the Washington law as to the management and disposition of community property shows that they are practically identical with the provisions of the Porto Rican statute.

We permit ourselves to repeat the reference made in our main brief to the subsequent case in the State court of Washington, where the application of the same principle resulted in holding that the ownership of community property became a tenancy in common after the dissolution of a conjugal partnership by divorce (*Ambrose vs. Moore*, 46 Wash., 463).

Of course, if plaintiff and defendant are tenants in common, the right to bring this action in the nature of ejectment cannot be doubted.

We confidently submit that, consistently with the principles announced and applied by this court in both *Warburton vs. White and Arnett vs. Reade*, the proceedings of the trial court in the case at bar cannot be sustained.

We therefore respectfully ask that the several contentions made in the brief for defendant in error be overruled, that the judgment of the trial court be reversed, and that the cause be remanded for a new trial.

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Attorneys for Plaintiff in Error.





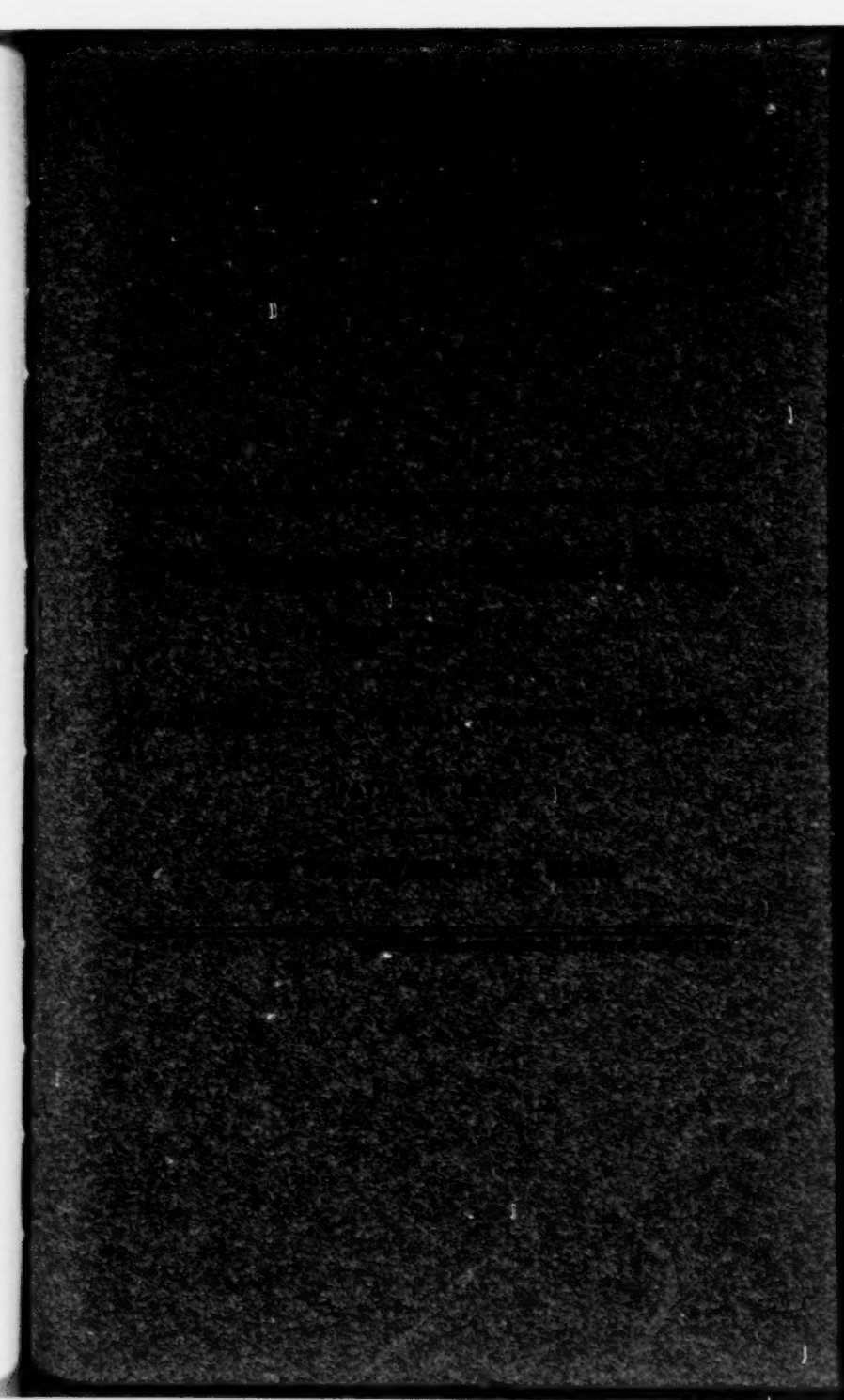


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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

RAFAEL MARTINEZ NADAL, PLAINTIFF	} No. 130.
IN ERROR,	
v.	
DAVID W. MAY.	

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR PORTO RICO.*

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

On June 26, 1909, the plaintiff brought an action, in the nature of ejectment, in the District Court of the United States for Porto Rico, for the recovery of one-half interest in the plantation called "Carmen," together with a demand for mesne profits for the unlawful detention of the plantation, at the rate of \$2,500 per year, from August 1, 1906 (Complaint R. 1). The plaintiff claimed that the plantation was the community property of Isidro Fernandez Sanjurjo (hereinafter called the husband) and his wife, Altigracia Nadal y Freyere (hereinafter called the wife), and was alienated by the husband on June 2, 1902,

without the consent of the wife; and that the wife's interest in the property could not thus be disposed of, without her consent, under the law in force in Porto Rico on June 2, 1902. The plaintiff claimed that the wife's interest in the property was devised to him by the will of the wife, dated April 27, 1906. The defendant, representing the People of Porto Rico, claimed under the conveyance by the husband on June 2, 1902 (R. 9).

The trial court directed a verdict for the defendant on two grounds: (1) that the defendant had a valid legal title and (2) that the will under which the plaintiff claimed conveyed no interest in Carmen (fols. 192-194).

To review the judgment entered upon this direction in favor of the defendant the case is now here.

Facts.

The relevant facts are few and simple, once they are extracted from the jumble of an inartistic record and the undramatic prolixity of title deeds.

(a) On October 25, 1900, the husband took title of the land in question in his own name (p. 32 *et seq.*) and conveyed it, on April 26, 1901, without consideration, to Federico Philippi (p. 39 and fol. 169). On November 11, 1901, Philippi conveyed the land to Rosa, Dolores, and Elisa Sanjurjo without consideration (fols. 96 *et seq.* and fol. 169).

(b) On May 1, 1901, the wife brought suit against the husband for an accounting, alleging, in her bill, that the husband had received money and property

belonging to her; had wasted considerable sums thereof and invested others in real estate, taking the title thereto in his own name. Among such property, the wife claimed, was the plantation "Carmen" (p. 59 and fol. 121). The bill asked for a cautionary notice of the complaint to be entered in the registry of the property (fol. 127). Thereafter, on November 16, 1901, husband and wife entered into an agreement of compromise and settlement (p. 132). Upon accounting, it was found that the husband owed his wife \$10,000 as the product of her paraphernal property sold by him. In liquidation of this accounting, he paid her \$5,000 in money and executed a mortgage, dated November 16, 1901, in favor of his wife, on a cattle ranch in Guanajibo (fols. 137 *et seq.*), and conveyed several pieces of real estate to a third person for the benefit of the wife (fols. 152 *et seq.*). Thereupon, on the same day, November 16, 1901, the suit for an accounting was dismissed, and the cautionary notice of the complaint against the property claimed by the wife was cancelled (fol. 130).

(c) On March 1, 1902, the Legislature of Porto Rico enacted a new Civil Code, section 1328 of which, in effect, required the consent of the wife for the disposal of the real estate property of the community, and to that extent, limited the absolute power of disposal of the husband over immovables under the Spanish Civil Code. One of the vital issues of the case is the date when the new Code of March 1, 1902, became effective. If, as we contend, July 1, 1902, is the effective date, *cadit quaestio*. For

(d) On April 19, 1902, "Carmen" was re-conveyed by Rosa, Dolores, and Elisa Sanjurjo to the husband (fol. 132), and on June 2, 1902, the husband conveyed the property to Elisa Sanjurjo (fols. 108 *et seq.*). The wife did not join in this conveyance, and it is the failure of the wife to consent to this transfer of June 2, 1902, which is the foundation of any possible claim of the plaintiff. If the old Civil Code was still in force, her consent was unnecessary (Sec. 1413 of the Spanish Civil Code of 1889).

(e) On August 29, 1902, Elisa Sanjurjo, for valuable consideration, conveyed "Carmen" to the People of Porto Rico (fols. 108 *et seq.*). The registry of property relative to the plantation showed no cautionary notice entered by the Registrar of Property specifying any defect in its title (fol. 111). Porto Rico went into possession and, at all times, continued in possession, utilizing the property as an agricultural experiment station, and making valuable improvements (fols. 49, 175). The wife had knowledge of this sale (fol. 52).

(f) On April 10, 1906, the wife assigned to her nephew, Rafael Martinez Nadal, the plaintiff, the legal mortgage on the cattle ranch in Guanajibo, which came to her in settlement of the suit against the husband (b) *supra*. (p. 73 *et seq.*)

(g) On April 27, 1906, the wife executed the will under which plaintiff claims (fols. 38 *et seq.*), and it was admitted to probate on July 28, 1906 (fol. 37). The will is in Spanish. It was agreed that there was

no question for the jury under the will, that its interpretation was entirely a matter for the court (fol. 34). The court accepted the following translation of the material portion of the will, made by the official interpreter, as the correct translation:

In view of the good conduct of my nephew Don Rafael Martinez y Nadal, and taking into account his situation and the affection which he daily shows me, I bequeath to him a mortgage note upon the cane plantation known as La Margarita de Schroder, for the sum of five thousand four hundred dollars, as well as all the rights and actions therein. I also bequeath to my nephew, Rafael Martinez Nadal, the legal mortgage executed by my husband in my favor upon the cattle ranch situated in Guanajibo of Cabo Rojo, in case the assignment which I made of the said mortgage in favor of my nephew aforesaid, Rafael Martinez y Nadal, shall not have become effective [your translations put the word "and" there], all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband. (fol. 34).¹

¹ The original Spanish is as follows:

"7a. En vista del buen comportamiento de mi sobrino Rafael Martinez y Nadal, y atendiendo a su situacion y al efecto que me demuestra diariamente le lego, un vale hipotecario sobre la hacienda de cañas llamada 'Margarita de Schroder,' por la cantidad de cinco mil cuatrocientos dollars, así como todos sus derechos y acciones. Lego tambien a mi sobrino Rafael Martinez y Nadal, la hipoteca legal otorgada por mi esposo a mi favor sobre una finca de crianza sito en Guanajibo de Cabo Rojo, caso de que no hubiese surtido efecto la cesion que ante Notario hice de dicha hipoteca a favor de mi ameritado sobrino Rafael Martinez y Nadal, todos los derechos y acciones

The assignment referred to in the will is the assignment of April 10, 1906 (f) *supra* (fols. 146-47). At the time of the execution of this will, the People of Porto Rico were, as we have seen, in possession of "Carmen", and at the time of the making of the will, the testatrix knew that the title of the property was in the name of the People of Porto Rico (fols. 49, 52).

The theory of the plaintiff's claim is that the estate "Carmen" was included in the above devise: "I also bequeath to my nephew Rafael Martinez y Nadal, the legal mortgage executed by my husband in my favor upon the cattle ranch situated in Guanajibo of Cabo Rojo, in case the assignment which I made of the said mortgage in favor of my nephew aforesaid, Rafael Martinez y Nadal shall not have become effective, all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband."

que puedan caberme en los bienes mios que esten a nombre de mi esposo Isidro Fernandez Sanjurjo en virtud de la transaction celebrada con mi dicho esposo." (fol. 36).

And the following is the translation urged by the plaintiff:

"7th. In view of the good behavior of my nephew Don Rafael Martinez y Nadal, and considering his situation and the affection which he daily shows towards me, I bequeath to him a mortgage note upon the plantation called 'Margarita de Schroder,' for the sum of \$5,400, together with all of its rights and liens; I also bequeath to my nephew Don Rafael Martinez y Nadal the legal mortgage executed by my husband in my favor over a cattle ranch situated in Guanajibo of Cabo-Rojo, provided that the assignment of said mortgage which I made before a notary in favor of my said nephew Don Rafael Martinez y Nadal should not have been effective, all of the rights and claims which may remain to me in my property which should be in the name of my husband, Isidro Fernandez Sanjurjo by virtue of the compromise entered into with my said husband." (fol. 35).

ARGUMENT.

We shall argue:

I. The new Civil Code did not go into effect until July 1, 1902, and the controlling conveyance of June 2, 1902, under the then existing Spanish Civil Code, was properly made by the husband without the consent of the wife.

II. The will, under which plaintiff claims, conveys no interest in "Carmen."

III. As ~~a~~ bona-fide purchasers for value ("third person"), the People of Porto Rico are protected, under the Porto Rican Mortgage Law, in their title, for no defect or cautionary notice appeared in the Registry against it.

IV. Plaintiff's claim involves a preceding liquidation of the community of husband and wife. This is solely a subject matter for the local probate court and beyond the jurisdiction of the District Court of the United States for Porto Rico.

V. The assignments to rulings on evidence are without merit.

I.

THE NEW CIVIL CODE DID NOT GO INTO EFFECT UNTIL JULY 1, 1902, AND THE CONTROLLING CONVEYANCE OF JUNE 2, 1902 UNDER THE THEN EXISTING SPANISH CIVIL CODE WAS PROPERLY MADE BY THE HUSBAND WITHOUT THE CONSENT OF THE WIFE.

1. The point of departure of plaintiff's claim is the conveyance by the plaintiff, his wife not joining, of "Carmen" to Elisa Sanjurjo on June 2, 1902. As put by plaintiff's counsel—"it is *as of that date*

that the right of Sanjurjo to convey and the right of the wife to claim, despite that conveyance, is to be determined." (Plaintiff's in Error Brief p. 20). The law in force on that date was the Spanish Civil Code, which endowed the husband with authority to sell and encumber the real property of the conjugal partnership without the consent of the wife (Articles 1412-13 of Civil Code Act of 1889, *Garrozi v. Dastas* 204 U. S. 64, 78). The new Civil Code passed by the Porto Rican Legislature on March 1, 1902 did not go into effect until July 1, 1902, and, therefore, the limitations upon the husband's authority had no application to the transaction here at issue.

This has twice been flatly ruled by the Supreme Court of Porto Rico upon a precisely similar issue, namely, the right of the husband to convey conjugal property without the wife's consent. In the case of *Buso v. Buso* 16 P. R. Rep. 864, the annulment of a contract of bargain and sale was sought on the ground that the property involved was community property and the wife did not join in a conveyance thereof on April 19, 1902. The issue, therefore, was as to the effective date of the new Civil Code.

Such cause for nullity does not lie because the contract of bargain and sale in question should be governed by the provisions of the Civil Code in force at the time it was made—that is to say, on April 19, 1902—at which time the Spanish Civil Code was in force and not the Revised Civil Code, for we have already stated on February 24, 1910, in deciding the

case of *Estate of Morales v. The Registrar of Property of Caguas*, 16 P. R. R. 109, that “* * * The Revised Civil Code went into effect on July 1, 1902, according to the certificate issued by the then Secretary of Porto Rico, Charles Hartzell, which certificate is found at the beginning of the Revised Statutes and Codes of Porto Rico.” (16 P. R. Rep. 864, 867-8.)

And as the Supreme Court of Porto Rico points out, this Court *arguendo* has likewise stated that the new Civil Code of 1902 “went into effect July first of that year” (*Ortega v. Lara* 202 U. S. 339, 343). Here, surely, is one of those instances of the local “understanding of a matter of purely local concern” (*Santa Fe Central R. R. Co. v. Friday*, decided March 23, 1914) which this Court will respect. It is the local settlement of a local matter determined after two thorough considerations by the local Supreme Court upon the strength of which property rights have been adjusted. If this Porto Rican construction of the Porto Rican Civil Code prevails, there is an end to the plaintiff's case.

2. The valid human reason why such local finding should be respected is because the local understanding rests upon facts and circumstances and traditions all too often inarticulate. In this instance, if it be necessary, we can spell out the rational groundwork for the decision of the Porto Rican Supreme Court. The Legislature of Porto Rico, by the terms of the Foraker Act, can sit, ordinarily, only sixty

days (sec. 29 of the Act of April 12, 1900, 31 Stat. 77, 83). Its session of 1902 commenced on January 1st and, therefore, the last day of its session was March 1, 1902 (Minutes of the Executive Council of Porto Rico for December 4, 1901, 2 Journal of the Executive Council, 222). On the last day of that session, the Legislature passed four new codes, making extensive and radical changes in the laws of the Island, to wit: Political Code, Penal Code, Code of Criminal Procedure, and Civil Code. In two of these codes (Code of Criminal Procedure and the Penal Code), care was taken to designate the time of taking effect as July 1, 1902. In the other two no time whatever for the commencement of the codes was given. True, ordinarily that would make them take effect at once. But this was not the ordinary case. The changes that were wrought by these codes were so important, and the enactment of the codes was so hasty, that the Legislature, on the same day, directed the Secretary of Porto Rico and the Joint Codes Committee of the Legislature to revise and arrange the provisions of the codes for publication (Act of March 1, 1902, Laws of Porto Rico, S. Doc. 418, 57th Cong. 1st Sess. p. 42). It is in pursuance of this Act that the Secretary of Porto Rico (who by Section 19 of the Foraker Act is charged with the duty of promulgating all laws of the Island) certified these Codes, stating that "the same by their terms are in effect on and after the first day of July, A. D. 1902" (Revised Statutes & Codes of Porto Rico). It is

behind this certificate that the Supreme Court of Porto Rico has refused to go. It must have been evident that it was the intent of the draftsmen and of the Legislature, in enacting these Codes, that they should not go into effect until July 1st, 1902. For there were no means of making them public for the guidance of those whom they affected before that date; and, under the circumstances, there would be as much injustice to have made them take effect on the date of their passage, because of the inadvertance of giving expression to the intended deferred effective date, as there was to the old common law rule which dated every Act of Parliament from the first day of the session in which it was passed.

3. Whatever doubt there was in the Legislature's mind as to the time of taking effect of the Act, the Legislature meant to leave no room for uncertainty to validate transactions based upon the old law made under the shifting conditions of the law and to give ample time to permit knowledge of the new law and adjustments to its new requirements. For on February 24, 1903, the Porto Rican Legislature passed the following Act:

SECTION 1. That all deeds of mortgage, conveyances of real estate, wills, declarations of trust, marriages, recognitions of natural or illegitimate children, adoptions of minor children, and in general all acts and contracts which require for their validity the certification by a notary, or that may have required the intervention of the family council, or a

tutor or protutor, that may have been executed or drawn on and after the first day of March, nineteen hundred and two, or on or prior to the first day of January, nineteen hundred and three, and which according to the laws of Porto Rico, in force on the twenty-eighth day of February, nineteen hundred and two, or in force on the first day of January, nineteen hundred and three, would be valid and sufficient and entitled to be registered, copied, and filed in a registry of deeds, or in any office or archive in the Island of Porto Rico, are hereby declared to be valid and sufficient for all lawful purposes thereby intended. (Compilation of Revised Statutes and Codes of Porto Rico, 1913, p. 87.)

On its face this Act renders *all* conveyances of real estate, executed after March 1, 1902, which would have been valid according to the laws of Porto Rico on the 28th day of February, 1902, valid up to January 1, 1903 (see *Morales v. Registrar of Property*, 16 P. R. Rep. 109, 111). Upon the demurrer to the complaint below (5 P. R. Fed. Rep. 582), Judge Rodey seemed to be of the opinion that the Act cured only formal defects such as the want of certification, etc.—in other words, technical notarial defects. There is no basis, however, for thus limiting the operation of the curative Act. To do so defeats the purpose which an understanding of the history back of its enactment manifests. All deeds of mortgage, all conveyances of real estate, wills, etc. are declared valid, *and* in general all acts

and contracts requiring certification by notary. In other words, the clause commencing "and in general all acts and contracts" extends and does not limit the preceding language. This becomes apparent when it is remembered that public instruments requiring notarial certification in Porto Rico include a large number of instruments besides "deeds of mortgage, conveyances of real estate, wills, declarations of trust, marriages, recognition of natural or illegitimate children, adoption of minor children" (see sections 1184 & 1247 of the new Civil Code). The validating Act meant to give effect to all instruments which for whatever reason under the new Civil Code could be denied registry. As we shall see below, failure of the wife to consent to conveyances under Section 1328 after January 1, 1903 is a ground on which the Registrar of Deeds could and does refuse registry (see *Amadeo v. Registrar* 3 P. R. Rep. 263). To cure such a defect in the validity of a conveyance is clearly within the effective language of this validating Act.

II.

THE WILL UNDER WHICH PLAINTIFF CLAIMS CONVEYS TO HIM NO INTEREST IN "CARMEN."

Concededly, the interpretation of the will was a matter for the court. (fol. 34.) The language of the material bequest is intelligible only in the light of its interpreting background.

Husband and wife separated about the close of 1900 (fol. 50). Thereafter, on May 1, 1901, the wife, as we have seen, brought suit against the husband for

an accounting of her paraphernal property, as well as the property into which her husband had converted some of the proceeds of such paraphernal property. This consisted of real estate which the husband had taken in his own name. Among this property the wife enumerated the plantation "Carmen" (p. 59 *et seq.* & fol. 121). On November 16, 1901, an agreement of settlement was entered into between husband and wife, after an accounting made between them, showing an indebtedness of the husband for \$10,000, in accordance with which the husband paid the wife \$5,000 in money and gave her a mortgage note for the other \$5,000 executed the same day upon the husband's cattle farm in Guanajibo (fol. 132, 137 *et seq.*). The wife, on her part, obligated herself to dismiss the complaint and to renounce all the rights and interest "which she might have against her husband because of the facts stated in the said complaint" (fol. 133). This agreement was carried out, and the suit discontinued by order of the District Court of Mayaguez (fols. 129-131). Thereafter, as we have seen, "Carmen" was first transferred to Elisa Sanjurjo on June 2, 1902 (fols. 54, 108), and on August 29, 1902, by Elisa Sanjurjo, conveyed to the People of Porto Rico (fol. 108). We have also seen that the entries in the Registry of Property showed no cautionary notice entered against this property specifying any defect in title (fol. 111), for the cautionary notice of the wife's complaint was cancelled upon the discontinuance of the suit (fol. 120). The title continued unchanged in the name of the People

of Porto Rico, and at the time of the making of her will the wife knew that the title stood in the name of the People of Porto Rico (fol. 49). On April 10, 1906, the wife assigned the legal mortgage on her husband's cattle ranch to the plaintiff (p. 73 *et seq.*). Seventeen days after this assignment—on April 27, 1906—her will was executed (fol. 38) and was admitted to probate July 28, 1906 (fol. 37).

And now the terms of the will:

In view of the good conduct of my nephew, Don Rafael Martinez Nadal, and taking into account his situation and the affection which he daily shows me, I bequeath to him a mortgage note upon the cane plantation known as La Margarita de Schroder, for the sum of five thousand four hundred dollars, as well as all the rights and actions therein. I also bequeath to my nephew, Rafael Martinez Nadal, the legal mortgage executed by my husband in my favor upon the cattle ranch situated in Guanajibo of Cabo Rojo, in case the assignment which I made [before a notary] of the said mortgage in favor of my nephew aforesaid, Rafael Martinez y Nadal shall not have become effective, all the rights and actions which may pertain to me in my properties which are in the name of my husband, Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband. (Fol. 34.)

It is clear that the "settlement" [transacción] referred to in the will is the agreement of November 16, 1901; the "legal mortgage" is the mortgage

executed by the husband in the wife's favor in pursuance of the settlement, and the "assignment" to the nephew is the assignment of April 10, 1906.

(a) The will was executed on April 27, 1906. From the state of affairs then existing it derives its meaning. The basis of the plaintiff's claim is that the estate "Carmen" was included in the devise "all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo by virtue of the settlement made with my said husband." On its face this clause bequeaths only rights and actions to properties in her husband's name, but the estate "Carmen" was not in the name of the husband at the time of the settlement, November 16, 1901,² nor at the time of the making of the will.

Since August 29, 1902, the title was continuously in the name of the People of Porto Rico. During the four years following, the testatrix had actual knowledge of the transfer of the property and the improvements that were made thereon by the Government. She knew that the estate "Carmen" no longer belonged to her husband or stood in his name. She could not have intended to refer to that property when she bequeathed to her nephew rights and actions which may pertain to her in properties which were "in the name of my husband."

² It was conveyed by the husband to Philippi on April 26, 1901 (p. 39, fol. 169), and on November 11, 1901, by Philippi to the Sanjurjo nieces (fol. 10), and was not reconveyed to the husband until April 19, 1902 (fol. 102).

(b) This is a negative way of reaching this conclusion. The same result is arrived at by giving a rational and ample meaning to the inartistic language of the testatrix. Undoubtedly, the key to the second sentence of the article in question is the settlement of November 16, 1901. It is wholly immaterial whether in the suit for accounting Carmen was claimed as paraphernal property, and in this suit is claimed as gananical property. The fact is that "Carmen" was one of the properties claimed by the wife in the suit for accounting and the settlement relinquished all claim to it. It is equally immaterial whether a liquidation of the community could or could not be made without a judicial settlement. In the present complaint the plaintiff's claim is that Carmen was bought with "the individual and separate money and funds" of the wife (fol. 3). The husband took title to it in his own name and was therefore, on plaintiff's own contention, personally indebted to his wife. The settlement of November 16, 1901, was the adjustment of the indebtedness of husband to wife (fol. 133). The will was drawn with an acceptance of this adjustment.

The meaning which exudes from the pores of the disputed sentence is that the testatrix disposed of properties which came to her by virtue of the settlement. Its evident purport is that the testatrix, having previously *assigned* the legal mortgage executed by her husband, *bequeathed* to the nephew this mortgage in order to avoid a possible defect in the assignment. And just as in the first sentence of this

article of the will she followed the bequest of the mortgage note in the plantation Margarita de Schroder with the clause "as well as all the rights and actions therein," so she follows the bequest of the mortgage in the Guanajibo property with the clause "all the rights and actions which I may have," etc. In other words, by a consideration of the situation at the time the testatrix executed her will, and of the settlement therein referred to, it is made plain that "all the rights and claims" is synonymous with and refers directly to, the legal mortgage on the cattle ranch in Guanajibo, and to nothing else. There was, therefore, no justification in the plaintiff's demand for the insertion of "y," "and", in the will. The testatrix said exactly what she meant. She was repetitive but she was accurate. The gratuitous insertion of "and" would simply make a futile, rhetorical bequest, for, in bequeathing the mortgage on her husband's Guanajibo farm, she conveyed all the property she could convey.

III.

AS A BONA-FIDE PURCHASER FOR VALUE ("THIRD PERSON") THE PEOPLE OF PORTO RICO COULD RELY ON THE RECORD TITLE AND TOOK A CLEAR TITLE, FOR NO DEFECT OR CAUTIONARY NOTICE APPEARED IN THE REGISTRY AGAINST "CARMEN."

"Carmen" was conveyed to Porto Rico not by the husband but by Elisa Garcia, Aug. 29, 1902 (fol. 108). According to the Registry of Property, she had a

good title for the Registry "showed no cautionary notice entered by the Registrar of Property specifying any defect in the title" (fol. 111). As an innocent purchaser for value, Porto Rico had the right to rely on the sufficiency of this record title. This follows from the specific provisions as well as the organic nature of the Porto Rican Mortgage Law. Articles 33 and 34 of the Mortgage Law read as follows:

ART. 33. Instruments or contracts which are null under the law are not validated by their admission to record.

ART. 34. Notwithstanding the provisions of the foregoing article, instruments or contracts executed or entered into by a person who, according to the registry, has a right to do so, shall not be invalidated with regard to third persons after they have been recorded, even though the interest of such party should subsequently be annulled or terminated by virtue of a prior deed which was not recorded or for reasons which do not clearly appear from said registry. * * * (Compilation of Revised Statutes and Codes of Porto Rico, 1913, p. 1071.)

The theory of this legislation has thus been explained by the local court:

The cardinal principles upon which the Mortgage Law of Porto Rico is based consist in the security of credits guaranteed by real estate and the publicity of the transactions of

the Registry, to the end that a person who may have a lawful interest in ascertaining the condition of property and the person entering into contracts and having examined the same may not suffer loss or injury when in good faith his only object in entering into the obligation was the stability of the security offered by the real estate upon which the transaction was based.

For the purposes of the Mortgage Law, the owner of real estate is the person in whose name the same appears in the registry * * *

(*Roca v. Banco Territorial* 6 P. R. Rep. 339).

To make effective this system, the law makes the Registrar of Property a quasi-judicial officer, with power to determine the legality of the transactions and the validity of titles offered for registry. Article 18 of the Mortgage Law charges registrars with the responsibility of determining "the legality of instruments under which record is requested and the capacity of the parties thereto, upon the facts that appear from said instruments themselves," and if a Registrar should perceive "any defect involving the legality of the instruments or the capacity of the parties thereto," Article 19 of the Mortgage Law requires the Registrar either to secure correction of the defect or refuse registry. After January 1, 1903, we thus find constant refusals of registrars to record property conveyed by a husband without the express consent of his wife; in other words, the determination by the Registrar of just such an issue as is raised by

the plaintiff here—whether or not property is community property and needs the consent of the wife for its transfer. (*Armadeo v. Registrar* 3 P. R. Rep. 263; *Castro v. Registrar* 7 P. R. Rep. 458; *Escalona v. Registrar* 9. P. R. Rep. 523; *Riera v. Registrar* 11 P. R. Rep. 223).

Plainly, this power, this responsibility of the registrars is part of the system to secure publicity and reliance upon the facts of the Registry. In this case, running back the title, and finding the conveyance from the husband to Elisa Garcia, Porto Rico had the right to assume (putting aside for the present purpose our Point, I) that the power of the husband to convey this property without joining his wife was established to the satisfaction of the Registrar. Porto Rico had the right to rely on what appears now, *dehors* the record, in the settlement between husband and wife. We have seen that the wife put a cautionary notice against the property and we have also seen that this cautionary notice was cancelled (fol. 129-130). Redress for any harm in any given case must be sought against the person who conveys the defective title, or against the Registrar for failure to discharge his responsibility (*Roca v. Banco Territorial* 6 P. R. Rep. 339, 351). The registered title, however, must be respected.

IV.

PLAINTIFF'S CLAIM INVOLVES A PRECEDING LIQUIDATION OF THE COMMUNITY BETWEEN HUSBAND AND WIFE. THIS IS SOLELY A SUBJECT FOR THE LOCAL PROBATE COURT AND BEYOND THE JURISDICTION OF THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

The plaintiff, in effect, claims as heir to the wife's undivided half interest in the community upon dissolution of the conjugal partnership through her death. The law is well settled in Porto Rico, that upon such dissolution there must be a judicial liquidation to determine what is community property and to set aside the respective rights therein. Even a husband who has had entire management and control of community property up to the time of the death of his wife cannot thereafter dispose of his own interest until there has been a judicial liquidation:

But upon the dissolution of the marriage by the death of the wife, and the consequent dissolution of the partnership, the husband is reduced to the condition of a mere joint owner of the conjugal property, and to determine his real participation it is then necessary to effect a liquidation thereof, clearly ascertaining whether there exists any property belonging to the conjugal partnership, and, if so, said property must be divided between the co-partners and the respective portions recorded, as to immovables, in the Registry of Property, pursuant to Article 20, and those concordant therewith, of the Mortgage Law and regulations issued for its execution.

(*Parra v. Registrar of Property*, 2 P. R. Rep. 592, 593, 594.)

Such judicial liquidation is the necessary preliminary to any claim in any specific portion of the conjugal estate:

Furthermore, although it may be considered that the title of purchase to the rural estate involved in this case originally resided in the conjugal partnership entered into by the spouses, Tomas Roca and Lucia Gregory, this circumstance is not sufficient in itself for holding that the estate in question is community property, and therefore divisible by halves between the surviving spouse and the heirs of the deceased, inasmuch as it does not appear that at the time of the dissolution of the conjugal partnership by the death of the husband that a liquidation of the common property had been made and that a division of the net surplus among the interested parties had been effected, and that the share claimed in the said estate had been awarded to the plaintiff as heir of her deceased father, and that she therefore failed to establish the title of ownership necessary to maintain the action set forth in the complaint.

(*Roca v. Banco Territorial*, 6 P. R. Rep. 339, 353, 355.)

To the same effect—

Castro v. Registrar, 7 P. R. Rep. 458;

Escalona v. Registrar, 9 P. R. Rep. 523.

Admittedly, there was no such liquidation in this case. It is true that an allegation of the complaint

that the property was not subject to any debts was left undenied in the answer. But the interest of creditors is not the determining reason for the requirement of a liquidation. The need for such liquidation is to determine what property is to be classed as community property; to set aside the respective interests therein "for the purpose of having the proper record entered in the Registry of Property, in pursuance of the provisions of Article 20 of the Mortgage Law in force" (*Castro v. Registrar*, 7 P. R. Rep. 458, 461). And this court has held that a proceeding to liquidate the community between husband and wife is a probate matter for the local courts and outside of the jurisdiction of the District Court of the United States (*Garzot v. de Rubio*, 209 U. S. 283).

V.

THE ASSIGNMENTS TO RULINGS ON EVIDENCE ARE WITHOUT MERIT.

We have not considered specifically the exceptions raised to the admission and exclusion of evidence. There were no issues for the jury and there was no request on the part of the plaintiff to submit any questions to the jury and no assignment is based for refusal to leave any issue to the jury. The assignments to rulings on evidence all involve a consideration of issues which were matters for the court and are disposed of in our arguments on those points in connection with them, or they were matters wholly immaterial to the decision in the case.

CONCLUSION.

The judgment below should be left undisturbed or the case be remanded to the court below to dismiss the action for want of jurisdiction.

Respectfully submitted.

FELIX FRANKFURTER,
Law Officer,
Bureau of Insular Affairs.

WOLCOTT H. PITKIN, JR.,
Attorney General of Porto Rico.

APRIL, 1914.

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NADAL *v.* MAY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

No. 130. Submitted December 12, 1913; Restored to docket for reargument January 26, 1914; Reargued April 6, 7, 1914.—Decided April 20, 1914.

The Civil Code of Porto Rico of March 1, 1902, did not go into effect until July 1, 1902, *Ortega v. Lara*, 202 U. S. 339, and prior thereto the wife's assent to a conveyance by her husband was not necessary. Decisions of this court and of the local courts as to the date when a code of law making material changes in the prior existing law went into effect may well become a rule of property which should not be disturbed by subsequent conflicting decisions.

This court, as a general rule, is unwilling to overrule local tribunals upon matters of purely local concern. *Santa Fe Central Ry. v. Friday*, 232 U. S. 694.

5 P. R. Fed. Rep. 582, affirmed.

THE facts, which involve the validity of title to land in Porto Rico, and determination of the date when the Civil Code of 1902 went into effect, are stated in the opinion.

Mr. N. B. K. Pettingill, with whom *Mr. F. L. Cornwell* was on the brief, for plaintiff in error:

There was error in determining the meaning of the will. The translation of the official interpreter was not conclusive and the construction based thereon is erroneous.

There was error in the admission and exclusion of evi-

dence; as to excluding admission of Sanjurjo; excluding the statement as to property inherited by Altagracia Nadal; in the admission of the statement as to the liquidation of community property; the last inquiry is not within the issues nor is it material.

There was error in giving the peremptory charge. The plaintiff had established a *prima facie* case and defendant did not overcome it. There was error in overruling the demurrer to the special defense and holding the same sufficient to warrant directing a verdict for defendant.

The allegations were not sufficient to constitute estoppel.

In support of these contentions, see *Adams v. Akerlund*, 168 Illinois, 632; *Ambrose v. Moore*, 46 Washington, 463; *Arnett v. Reade*, 220 U. S. 311; *Boscio v. Registrar*, 14 P. R. Fed. Rep. 605; *Caballero v. Pomaes*, 17 P. R. Fed. Rep. 691; *Caballero v. Registrar*, 12 P. R. Fed. Rep. 214; *Crary v. Dye*, 208 U. S. 515; *Dooley v. Registrar*, 12 P. R. Fed. Rep. 202; *Feliu v. Registrar*, 16 P. R. Fed. Rep. 728; *Fernandez v. Gutierrez*, 10 P. R. Fed. Rep. 59; *Gonzalez v. Ortiz*, 17 P. R. Fed. Rep. 563; *Garrozi v. Dastas*, 204 U. S. 64; *Guies v. Lawrence*, 2 La. Ann. 226; *Hanrick v. Patrick*, 119 U. S. 156; *Mutual Life Ins. Co. v. Phinney*, 178 U. S. 327; *Rodriguez v. Registrar*, 14 P. R. Fed. Rep. 754; *Royal Ins. Co. v. Martin*, 192 U. S. 149; *Sturm v. Boker*, 150 U. S. 312; *United States v. Turner*, 11 How. 663; *Vidal v. Registrar*, 12 P. R. Fed. Rep. 198; *Warburton v. White*, 176 U. S. 484; *Wiser v. Lawler*, 189 U. S. 260.

While the Supreme Court of Porto Rico in *Busó v. Busó* held that the Revised Civil Code went into effect July 1, 1902, and that § 1328 of that Code was a new section inserted therein, which changed the law as it had previously obtained and first gave to the wife the power, by withholding her consent, to prevent the alienation of the real property belonging to the conjugal partnership, an examination of *Busó v. Busó* will show that the Supreme Court of Porto Rico did not investigate the ques-

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Argument for Defendant in Error.

tion for itself as an independent legal proposition, but was merely misled by the recital contained in the certificate of the Secretary of Porto Rico prefixed to the official printed volume of the Codes. See *Morales v. Registrar*, 16 P. R. Fed. Rep. 109, 114. See also § 41, Political Code, that every statute, unless a different time is prescribed therein, takes effect from its passage.

This section is but declaratory of the law as uniformly settled in the absence of any express provision to the contrary. *Matthews v. Zane*, 7 Wheat. 164, 211; *Memphis v. United States*, 97 U. S. 293, 296; *Seven Hickory v. Ellery*, 103 U. S. 423; *Louisville v. Savings Bank*, 104 U. S. 476; *Robertson v. Bradbury*, 132 U. S. 491; *Ortega v. Lara*, 202 U. S. 339.

The Revised Civil Code was approved by the governor of Porto Rico on March 1, 1902, and went into effect on that day as a matter of law.

The validating act of February 24, 1903, was not effectual. It is clearly an attempt at retroactive legislation which is invalid, if applied to the conveyance in question, because it divests the settled rights of property. *Wilkinson v. Leland*, 2 Pet. 661; *Mitchell v. Campbell*, 19 Oregon, 198, 207; *Showk v. Brown*, 61 Pa. St. 320; *Brinton v. SeEVERS*, 12 Iowa, 389; *Boston F. Co. v. Condit*, 19 N. J. Eq. 394, 399; *Houston & T. C. R. Co. v. Texas*, 170 U. S. 243, 261. See also *Gunn v. Barry*, 15 Wall. 610, 622; *Arnett v. Reade*, 220 U. S. 311, 320.

The meaning of paragraph seven of the will is not doubtful, nor is the doctrine of innocent purchaser applicable.

Division of community property is not necessarily a matter of probate jurisdiction.

As to *Garzot v. Rubio*, 209 U. S. 283, see *Arnett v. Reade*, 220 U. S. 311, and other cases cited *supra*.

Mr. Felix Frankfurter, with whom Mr. Wolcott H. Pitkin, Jr., Attorney General of Porto Rico, was on the brief, for defendant in error:

The new Civil Code did not go into effect until July 1, 1902, and the controlling conveyance of June 2, 1902, under the then existing Spanish Civil Code was properly made by the husband without the consent of the wife.

The will under which plaintiff claims conveys to him no interest in "Carmen."

As a bona fide purchaser for value ("third person") the People of Porto Rico could rely on the record title and took a clear title, for no defect or cautionary notice appeared in the registry against "Carmen."

Plaintiff's claim involves a preceding liquidation of a community between husband and wife. This is solely a subject-matter for the local probate court and beyond the jurisdiction of the District Court of the United States for Porto Rico.

The exceptions to rulings on evidence are without merit. In support of these contentions, see *Amadeo v. Registrar*, 3 P. R. Fed. Rep. 263; *Busó v. Busó*, 16 P. R. Fed. Rep. 864; *Castro v. Registrar*, 7 P. R. Fed. Rep. 458, 461; *Escalona v. Registrar*, 9 P. R. Fed. Rep. 523; *Garrozi v. Dastas*, 204 U. S. 64, 78; *Garzot v. de Rubio*, 209 U. S. 283; *Morales v. Registrar*, 16 P. R. Fed. Rep. 109, 111; *Ortega v. Lara*, 202 U. S. 339, 343; *Para v. Registrar*, 2 P. R. Fed. Rep. 592; *Riera v. Registrar*, 11 P. R. Fed. Rep. 223; *Roca v. Banco Territorial*, 6 P. R. Fed. Rep. 339, 351, 353, 355; *Santa Fe Central Ry. Co. v. Friday*, 232 U. S. 694.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit by the plaintiff in error to establish his title to one-half interest in a plantation called 'Carmen,' as devisee of his aunt, Altagracia Nadal. It is alleged that the plantation was bought with the separate money of Altagracia Nadal by her husband, after marriage; that she became the owner of one undivided half, subject to

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the administration of her husband until the termination of the conjugal partnership, and that this half passed to her devisee at her death. The complaint admits that after the purchase the husband purported to convey the whole plantation to a third person but alleges that the wife did not consent to the conveyance and that therefore her rights remained.

It appears that on May 1, 1901, Altagracia Nadal brought a suit against her husband for an account of her paraphernal property, alleging among other things, that he had recorded in his favor the estate Carmen, acquired by a deed of October 25, 1900, and praying judgment that it was her private property because bought with her separate funds, and for a cautionary notice to be entered in the registry. On November 10, 1901, a settlement was made by which it was stated that the husband had received ten thousand dollars as the product of the wife's paraphernal property, had paid her five thousand dollars and given a mortgage for the other five thousand, and in view thereof she "renounces all the rights and interests which she might have against her husband because of the facts stated in the said complaint." The instrument was presented to the court with a prayer that the court would hold that the parties had desisted from continuing the action and that the cautionary notice be cancelled, which was granted on November 21. There had been conveyances of Carmen, without consideration, it was testified; there was a reconveyance to the husband, and on June 2, 1902, he conveyed it, without his wife's consent, to Elisa Sanjurjo, who on August 29 of the same year conveyed it to the People of Porto Rico, for valuable consideration, there being then no cautionary notice on record. On April 10, 1906, the wife assigned to the plaintiff the mortgage received by her on the above settlement, and on April 27, 1906, made the will under which the plaintiff claims.

By this will the testatrix left to the plaintiff a mortgage

described, with all its rights and actions (*asi como todos sus derechos y acciones*) and also the mortgage assigned on April 10, in case the assignment should not have been effective in favor of her said nephew 'Rafael Martinez y Nadal, *todos los derechos y acciones que puedan caberme en los bienes mios que estén á nombre de mi esposo Isidro Fernandez Sanjurjo, en virtud de la transacción celebrada con mi dicho esposo.*'

The plaintiff's claim is founded on these last words. The official translation accepted by the court reads that she leaves the mortgage "in case the assignment shall not have become effective, all the rights and actions which may pertain to me in my properties which are in the name of my husband Isidro Fernandez Sanjurjo, by virtue of the settlement made with my said husband." The plaintiff contends that the word 'and' should be read in before 'all the rights and actions' on the notion that a *y* has dropped out or should be implied. He argues that the estate Carmen was not embraced in the settlement, because community property in which the wife had and retained a community interest and that the last words devise it—*en virtud de* signifying more nearly in spite of the settlement than by virtue of it.

On the other hand it is argued that the settlement renounced all claim by the wife to Carmen if any she had; that the last words of the will have an import similar to that of those used in connection with the previous mortgage; that *en virtud de* means by virtue of; that if the wife had a claim it was outside the settlement and those words would not describe it, even if at the date of the will the estate had still stood in the husband's name, where notoriously and as she well knew it had not stood for years. The government also claims as a *bona fide* purchaser without notice. It is obvious, we think, from this summary that these arguments against the plaintiff's claim are hard to meet, and they were not met. But it is

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not necessary absolutely to decide on their validity as the case is disposed of by a preliminary point.

Both sides agree that the wife's assent to a conveyance by her husband was made necessary for the first time by § 1328 of the Civil Code of March 1, 1902. Unless that Code went into effect at its date it did not apply to the conveyance of June 2. The plaintiff argues with much force that it was in effect then and that the decisions to the contrary are all based on a mistaken certificate of the Secretary of Porto Rico, but we are of opinion that the considerations on the other side must prevail. On the last day of its session the Legislature passed four codes making material changes in the existing law—the Political Code, the Penal Code, the Code of Criminal Procedure and the Civil Code, which although in form separate acts were published in one volume and constituted a large part of a system. Two of these Codes fixed July 1, 1902, as the time for their taking effect. It was the duty of the Secretary to promulgate the laws (Act of Congress of April 12, 1900, c. 191, § 19, 31 Stat. 77, 81), and he was directed by an act of the same date as that of the Codes to revise and arrange the provisions of the Codes for publication along with the Joint Codes Committee of the Legislature; the arrangement to be completed as soon as practicable after April 1, and publication being expected on or before August 1. A resolution of the day before shows that they had to be enacted before enrollment with manuscript corrections. *Rev. Stats. & Codes of Porto Rico, 1902, p. 299.* The Secretary certified that they were in effect on and after July 1, 1902. But the injustice of making the Civil Code operative before its contents could be known and before the revision contemplated by the law was so manifest that on February 24, 1903, an act was passed purporting to validate all conveyances of real estate and in general all acts that required certification by a notary executed after March 1, 1902, and on or before January 1,

1903, if they would have been valid by the laws in force on February 28, 1902. This court assumed that the Civil Code went into effect on July 1, in *Ortega v. Lara*, 202 U. S. 339, 343, and the Supreme Court of Porto Rico has decided the same point twice. *Estate of Morales v. The Registrar of Property of Caguas*, 16 P. R. Fed. Rep. 109, 114. *Busó v. Busó*, 18 P. R. Fed. Rep. 864, 867, 868. It is impossible to know how many or how important transactions may have taken place on the faith of these repeated solemn assurances, and apart from the general unwillingness of this court to overrule the local tribunals upon matters of purely local concern, *Santa Fe Central Ry. Co. v. Friday*, 232 U. S. 694, 700, it is not too much to say that the decisions have become a rule of property, even if we did not think, as we do, that probably the Secretary's certificate expressed the legislative will.

Judgment affirmed.
